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Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

October Term 2006

ELENA RUTH SASSOWER,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is it a constitutional violation, *prima facie* disqualifying, and misconduct *per se* for a court to conceal and wilfully fail to adjudicate a motion for its disqualification, disclosure, and transfer – and does it have jurisdiction to proceed further in the matter?

2. Was the District of Columbia Court of Appeals disqualified for interest and for pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky v. United States,* 510 U.S. 540 (1994), from adjudicating these consolidated appeals, entitling petitioner to transfer to the United States Court of Appeals for the District of Columbia, including pursuant to D.C. Code §10-503.18?

3. Does the District of Columbia Court of Appeals' Memorandum Opinion and Judgment further manifest that Court's interest and pervasive actual bias and is it so materially false and insupportable as to be, in and of itself, unconstitutional under the Due Process Clause?

4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable "reliable evidence" of judicial misconduct and corruption?

   (1) to make referrals to disciplinary and criminal authorities

   (2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance, *to wit,**

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* The four appellate issues that petitioner presented to the D.C. Court of Appeals, which its Memorandum Opinion

"i. As evidenced from the course of the proceedings before Judge Holeman, was [petitioner] entitled to his disqualification for pervasive actual bias meeting the 'impossibility of fair judgment' standard articulated by the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540? *

A. Were [petitioner's] February 23 and March 22, 2004 pretrial motions to disqualify Judge Holeman sufficient, as a matter of law, to require his disqualification for pervasive actual bias, divesting him of jurisdiction to 'proceed...further', pursuant to D.C. Superior Court Civil Procedure Rule 63-I – and was there any basis in fact and law for Judge Holeman's conduct and rulings challenged therein?

B. Were Judge Holeman's subsequent pretrial, trial, and post-trial rulings further confirmatory of his pervasive actual bias – and were they factually and legally supported?

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and Judgment materially falsified, are set forth *verbatim* on this page and the next. The only change is the substitution of the word "petitioner" for "appellant" – as petitioner here presents these four appellate issues for this Court's adjudication.

"* Encompassed in this issue is whether Judge Holeman's rulings, individually and collectively, were so egregiously 'erroneous' and prejudicial as to require reversal."

ii. Whether D.C. Code §10-503.18 entitled [petitioner] to removal/transfer of this 'disruption of Congress' case to the U.S. District Court for the District of Columbia where, additionally, the record establishes a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government?

iii. Is the 'disruption of Congress' statute, D.C. Code §10-503.16(b)(4), unconstitutional, *as written and as applied*?

iv. Whether, when Judge Holeman suspended execution of the 92-day jail sentence he imposed upon [petitioner], his terms of probation were appropriate and constitutional and whether, when [petitioner] exercised her right to decline those terms, pursuant to D.C. Code §16-760, it was legal and constitutional for him to double the 92-day jail sentence to six months?"

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Petitioner Elena Ruth Sassower respectfully petitions for a Writ of Certiorari to review the District of Columbia Court of Appeals' Memorandum Opinion and Judgment herein.

OPINIONS BELOW

The D.C. Court of Appeals' Memorandum Opinion and Judgment is reported, but unpublished, at 915 A.2d 964, 2006 LEXIS 709 [A-13]. Its subsequent Order denying rehearing and rehearing *en banc* is unreported and unpublished [A-20]. Its relevant prior Orders are unreported and unpublished [A-34, A-36, A-38, A-40, A-42, A-44, A-45, A-54, A-56, A-58, A-59, A-61, A-63]. The Orders of District of Columbia Superior Court Judge Brian F. Holeman denying disqualification, transfer, and other relief are unreported and unpublished [A-22, A-24, A-26, A-28, A-30], as likewise his Orders denying petitioner's motions for release from incarceration [A-43, A-46].

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1257(b). The Memorandum Opinion and Judgment was issued on December 20, 2006. The Order denying rehearing and rehearing *en banc* was issued on March 20, 2007. Chief Justice John D. Roberts, Jr. granted petitioner's motion to extend her time to file a Petition for a Writ of Certiorari to August 17, 2007.[1]

CONSTITUTIONAL, STATUTORY, COURT RULE, AND ETHICAL PROVISIONS INVOLVED

U.S. Constitution, 1st, 5th, 6th, and 8th Amendments; D.C. Code §10-503.16(b)(4); D.C. Code §10-503.18; D.C. Code §16-710; D.C. Code §23-110; D.C. Code §23-1325(c); D.C. Superior Court Criminal Rules 16(a)(1)(C), 35(a), 57(a), D.C. Court Civil Rule 63-I; d 57(a); D.C. Court of Appeals

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[1] The Chief Justice also granted petitioner's motion to add 5-1/2 pages to this cert petition, allowing her six pages.

Rules 9 and 14; Code of Judicial Conduct for the District of Columbia Courts: Canons 3B, C, D, E, & F, American Bar Association Code of Judicial Conduct, Canons 3C & D; Code of Conduct for U.S. Judges, Canon 3B [A-1-12c].

STATEMENT OF THE CASE

> "The law makes a promise – neutrality. If the promise gets broken, the law as we know it ceases to exist." – Justice Anthony M. Kennedy[2]

This case demonstrates the truth of Justice Kennedy's words, exposing a long nightmare of judicial lawlessness resulting from the deliberate and repeated breaking of the law's promise of neutrality by judges self-interested in the outcome.

No facts are required for petitioner's first issue other than that the D.C. Court of Appeals allowed to stand a Memorandum Opinion and Judgment which conceals, without adjudication, her motion to its Chief Judge and the appellate panel for judicial disqualification, disclosure and transfer [A-282]. Nonetheless, the facts required for petitioner's further issues are also germane to her first. Over and again, they presage what the D.C. Court of Appeals ultimately did and reinforce the necessity that this Court articulate the simple legal proposition – critical to ensuring judicial neutrality – that a court's willful failure to confront judicial disqualification/disclosure issues is *prima facie* disqualifying, misconduct *per se*, and divests it of jurisdiction to proceed further. The Court has never

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[2] This quote is from a speech Justice Kennedy gave at the American Bar Association symposium, "Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice", held December 4-5, 1998 in Philadelphia, Pennsylvania. The quote is featured on the website of the Justice at Stake Campaign (www.justiceatstake.org) as to "Why Judicial Independence Matters", followed by the assertion "there are mechanisms to hold judges accountable. Rulings can be appealed up to the Supreme Court."

spoken on the subject.

Ordinarily, a brief factual summary would suffice. Here, however, a lengthier summary is essential because the Memorandum Opinion and Judgment materially falsifies the "disruption of Congress" incident, materially falsifies petitioner's four appellate issues to the D.C. Court of Appeals and the record with respect thereto, and materially omits all that Court's extensive prior contact with the case. It is this prior contact, spanning 2-1/2 years and embracing all four of those appellate issues, that underlies petitioner's unadjudicated and concealed motion for disqualification, disclosure and transfer – and establishes the D.C. Court of Appeals' disqualification for interest and pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky v. United States*, 510 U.S. 540 (1994).

It must be noted that with one limited exception [A-34], all the D.C. Court of Appeals' orders during this 2-1/2-year span themselves conceal petitioner's prior motions for its disqualification, disclosure, and transfer. Consequently, these orders, though included in the appendix herein, cannot and do not provide information about the disqualification/disclosure/transfer issues. This has left petitioner with no choice but to herself recite the facts pertaining to her prior motions and those orders. Though consuming virtually the entirety of her cert petition, such provides this Court with the firmest of foundations for granting the petition.

The Alleged "Disruption of Congress"

Petitioner Elena Ruth Sassower is director of the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful, which she co-founded in 1993. Until January 2006, she was its coordinator.

On May 22, 2003, petitioner was arrested on a single misdemeanor charge of "disruption of Congress"

under D.C. Code §10-503.16(b)(4) [A-2] based on what she was alleged to have said at that day's public Senate Judiciary Committee hearing to confirm the nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals. When arrested, she was holding a page on which was written: "Mr. Chairman, there's citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge. May I testify?" [A-177]

The next day, at petitioner's arraignment in D.C. Superior Court, a copy of that page was provided to her by the U.S. Attorney for the District of Columbia. This, as part of his May 23, 2003 letter pursuing prosecution, which identified it as "copy of def's handwritten statement from which she was reading during disruption (1 page)". This contradicted the underlying police reports, copies of which the letter attached. These claimed petitioner had said: "Judge Wesley, look into the corruption of the New York Appeals Court" and had "wanted to 'testify'" [A-172]. The police reports did not state at what point in the Senate Judiciary Committee hearing petitioner had spoken.

The U.S. Attorney's letter also noted that there was a videotape which he might introduce at trial. Petitioner requested a copy, as well as a copy of the stenographic transcript of the hearing [A-187]. When produced at the first court conference [A-102, A-179][3], these showed: (1) petitioner did not begin speaking until after the presiding chairman, Senator Saxby Chambliss, had announced the hearing adjourned; (2) petitioner did not say "Judge Wesley, look into the corruption of the New York Appeals Court"; and (3) petitioner's only other words at the hearing were "Are you directing that I be

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[3] Petitioner sought to lodge a copy of the videotape with the Clerk's Office in support of this petition, but was told that such would be accepted only if the Court requests same. Petitioner's analysis of the videotape, the transcript, and the underlying prosecution documents are part of the record (A-171).

arrested?", which she three times repeated, without answer from Senator Chambliss, just as he had also not answered her question "May I testify?".

The video and transcript also established the material falsity of an amended *Gerstein*, a copy of which the U.S. Attorney had not provided petitioner, but which she found in the court file at the time of the first court conference [A-173][4]. Additionally, the video furnished tell-tale evidence that petitioner's arrest was pre-arranged. It showed that in the eight seconds petitioner is speaking [A-179], an unsurprised Senator Chambliss reaches for his glasses and then for a paper from which, by the tempo of his words, he apparently reads after petitioner was led from the hearing room by Capitol Police [A-181-2]. As for his striking the gavel, such was only to signify his announced adjournment of the hearing [A-179].

Not mentioned or produced by the U.S. Attorney's letter was petitioner's 39-page May 21, 2003 fax to Capitol Police entitled "NOT BEING ARRESTED" [A-65]. This fax – a copy of which was turned over months later in response to petitioner's First Discovery Demand – established that petitioner's presence and intent at the May 22, 2003 Senate Judiciary Committee hearing were

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[4] The reason the *Gerstein* was amended was recognized by a D.C. Superior Court judge in comments to the Assistant U.S. Attorney at the December 3, 2003 oral argument of petitioner's motion to compel discovery and disclosure by the U.S. Attorney:

> 'So, you have to at least inquire. You know, did somebody say, look, I'm a Senator and that person is not coming to my hearing and tell the police, I don't care how you do it, get rid of her. All right? And, as an example, I mean, she's going to make a claim that she didn't do anything wrong, and that, in fact, the charge is manufactured and, in fact, the charge is so thin, let me see if I can find it. Have you got your Gerstein handy?...
>
> When you read it, it's an amended Gerstein. [']After the Senator called for order, the defendant continued to shout.['] It wouldn't take long for a person, it certainly didn't take me but a second to think, ahh, there. Based on what was originally reported by the officers, they didn't have probable cause to arrest her... When they talked to a prosecutor, their representations were amended..." [A-145-6].

known in advance to Capitol Police, as well as to Senate Judiciary Committee Chairman Orrin Hatch, Ranking Member Patrick Leahy, and New York Home-State Senators Charles Schumer and Hillary Rodham Clinton. Her intent, in the event the presiding chairman did not himself inquire whether anyone present wished to testify – as had been done in the past – was to respectfully request to testify with "citizen opposition". The fax reflected that Capitol Police had threatened petitioner that if she so-requested, she would be arrested [A-71] and that petitioner had challenged this on two grounds. First, that it is the presiding chairman – not the police – who is in charge of the hearing and his decision whether to direct her arrest for respectfully requesting to testify. Second, that it would "deviate from the precedent" of the Senate Judiciary Committee's June 25, 1996 confirmation hearing at which petitioner had not been arrested for requesting to testify in opposition to a federal judicial nominee. As summarized by the fax, petitioner's arrest on June 25, 1996 was for alleged "disorderly conduct" in the hall outside the Committee room after the hearing had ended – a charge so completely trumped up that she had filed a misconduct complaint against Capitol Police [A-65-6, A-71(fn. 3), A-89-93].

Petitioner's May 21, 2003 fax further revealed that her contact with Capitol Police on that date was the result of its telephoning her, at the instance of Senator Clinton's office, on whose voice mail she had left two messages for the Senator's chief-of-staff about the misconduct of the Senator's counsel and legislative correspondent, also a lawyer [A-65, A-71-73]. The fax recited the specifics of their misconduct. Neither had read her submitted written statement detailing the documentary evidence of Judge Wesley's corruption as a New York Court of Appeals judge, they refused to read it, and, by their own admission, had not read the substantiating casefile evidence which accompanied it. Nevertheless, they told petitioner that Senator Clinton would take no steps to stop the confirmation. Nor would

she endorse petitioner's request to be permitted to testify at the hearing. In so stating, they refused to give Senator Clinton petitioner's written statement so that she could read it herself. Likewise, they refused to give the Senator petitioner's correspondence requesting her personal review of the Senate Judiciary Committee's failure to make any findings of fact and conclusions of law with respect to the written statement [A-184-5] – all the more egregious as it also covered up the fraudulence of the barebones bar association ratings approving Judge Wesley for the federal bench.

D.C. Superior Court Record Underlying Petitioner's Pre-Trial Petition for Mandamus, Prohibition, Certiorari, Etc.

Petitioner's position, from the outset, was that "a citizen's respectful request to testify at a congressional committee's public hearing is not – and must never be deemed to be – 'disruption of Congress'". Although she immediately asserted that the videotape of the Senate Judiciary Committee's May 22, 2003 hearing and her May 21, 2003 fax to Capitol Police established that the U.S. Attorney had no legitimate case to prosecute [A-186], she could not secure adjudication of this, even after she made a formal motion against the U.S. Attorney[5] for disclosure and to enforce her discovery rights under D.C. Superior Court Criminal Rule 16(a)(1)(C) [A-6], which he was sabotaging. Instead, D.C. Superior Court maneuvered to bring the *pro se* petitioner to trial without the documents and witnesses material to her defense

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[5] This October 30, 2003 motion reiterated petitioner's view, made 2-1/2 months earlier in motion papers, that the U.S. Attorney for the District of Columbia should be disqualified. This, based, *inter alia*, on the prejudicial involvement of the Assistant U.S. Attorney who had signed the May 23, 2003 prosecution letter. Not only had she formerly been Senate Judiciary Committee counsel, but her misfeasance in that capacity had been chronicled by petitioner in 1998 – misfeasance similar to that of successor Senate Judiciary Committee counsel underlying the "disruption of Congress" case.

which she was also to be precluded from presenting.

The judge most profoundly violating petitioner's rights was newly-sitting D.C. Superior Court Judge Brian F. Holeman, against whom she made two pretrial disqualification motions, dated February 23, 2004 and March 22, 2004 [A-104, A-131]. Each chronicled the dispositive nature of her discovery/disclosure motion in establishing that the "disruption of Congress" charge was bogus and malicious – impelling any fair and impartial tribunal to have thrown it out "on the papers", with sanctions against the U.S. Attorney. Each also sought change of venue.

Petitioner's March 22, 2004 disqualification motion was made pursuant to D.C. Superior Court Civil Rule 63-I, applicable by Criminal Rule 57(a). Supported by her 27-page affidavit [A-133] and incorporating her prior 22-page February 23, 2004 affidavit [A-106], petitioner demonstrated that Judge Holeman's conduct and rulings were so abusive and devoid of factual and legal basis as to manifest pervasive actual bias reaching the "impossibility of fair judgment" standard of *Liteky v. United States*, 510 U.S. 540, 551, 556, 565 (1994) [A-133 (¶3), A-157-61]. Petitioner also reiterated and expanded upon extrajudicial facts set forth by her previous motions, impinging upon Judge Holeman's fairness and impartiality, as they had on the succession of temporarily-assigned D.C. Superior Court judges who had preceded him and whose violative conduct and rulings petitioner also demonstrated [A-117-124, A-162-164].[6]

Based on her showing of violative judicial behavior in the D.C. Superior Court and the failure of its

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[6] These included the D.C. Superior Court judge whose seat Judge Holeman filled. Her husband had been Chief of Capitol Police and in 1997 had wrongfully dismissed the police misconduct complaint that petitioner had filed arising from her June 25, 1995 arrest. Such complaint was against the very police officer who was the true arresting officer on the "disruption of Congress" charge, but whose identity the underlying police reports falsified. [A- 163 (fn)].

supervisory echelons to respond to her entreaties for help, including the Chief Judge of its Criminal Division, Noel Anketell Kramer, petitioner also sought removal/transfer of the case to the United States District Court for the District of Columbia [A-134 (¶3), A-165 (¶36)] – relief she asserted was available pursuant to D.C. Code §10-503.18 [A-3], which her March 22, 2004 motion cited for the first time [A-131-2 (¶2), A-164-5].

Judge Holeman's response was to deny removal/transfer by falsely claiming that petitioner had cited no "new[ ]...facts" nor "any legal authority supportive of the requested relief" [A-29]. He also denied petitioner's request for a stay of the trial by falsely purporting that it was being sought "pending appeal of this ruling" [A-29], rather than pending her bringing of a writ of mandamus and prohibition to the D.C. Court of Appeals and/or a removal petition to the U.S. District Court [A-132 (¶3)].

Not until a week later did Judge Holeman deny the disqualification branch of petitioner's March 22, 2004 motion [A-30]. By then, petitioner had served him with her April 6, 2004 petition for a writ of mandamus and prohibition to disqualify him and for certiorari and/or certification of questions of law as to her entitlement to removal/transfer under D.C. Code §10-503.18.

In denying disqualification, Judge Holeman identified none of the facts, law or legal argument petitioner had presented, except to say that she had complained that his orders were "all based on conclusory claims" or "did not state reasons" [A-32]. His April 6, 2004 order said nothing about petitioner's showing that his rulings were "judicial lies", being factually and legally insupportable – which he did not deny. Instead, he falsely asserted that bias and prejudice, to be disqualifying, must have "originated from sources outside of court proceedings" and that petitioner "failed to establish that the alleged bias and prejudice stems from an extrajudicial source" [A-32]. In so doing, he did not identify that petitioner had pointed to extrajudicial

sources of his bias and prejudice. Nor did he identify or discuss *Liteky* – including the quote from *Liteky* from both petitioner's March 22, 2004 disqualification motion and her mandamus petition that "an allegation concerning some extrajudicial matter is neither a necessary nor sufficient condition for disqualification under any of the recusal statutes" [A-161 (fn. 6]. Instead, Judge Holeman falsely purported that petitioner "failed to cite any legal authority for the requested relief" of his disqualification [A-33].

Pre-Trial Petition to the D.C. Court of Appeals

Petitioner's petition to the D.C. Court of Appeals for a writ of mandamus and prohibition to disqualify Judge Holeman (no. 04-OA-17) rested on three grounds:

(1) the D.C. Court of Appeals' own decisional law, *Anderson v. United States*, 754 A.2d 920 (2000), citing its *en banc* decision in *Scott v. United States*, 559 A.2d 745 (1989), for the proposition: "this court has recognized that where a trial judge should recuse, but declines to do so, a writ of mandamus is an appropriate remedy". Petitioner demonstrated that her right to mandamus was *a fortiori* to both those cases;

(2) the D.C. Court of Appeals' own decisional law, *Banov v. Kennedy*, 694 A.2d 850 (1997), citing its decision in *Yeager v. Greene*, 502 A.2d 980 (1985), for the proposition that mandamus is traditionally available "to confine [a]...court to a lawful exercise of its prescribed jurisdiction "...where the right to relief is "clear and indisputable". Petitioner demonstrated that Rule 63-I was mandatory in divesting a judge of jurisdiction to proceed in face of a sufficient affidavit, such as her March 22, 2004 affidavit [A-133];

(3) well-settled U.S. Supreme Court caselaw, reflected in *Banov* and *Yeager*, reserving mandamus for "extraordinary" and "exceptional" circumstances. Petitioner argued that such circumstances exist where a disqualification motion demonstrates pervasive actual bias meeting the "impossibility of fair judgment"

standard of *Liteky*, as her March 22, 2004 affidavit had done in demonstrating that Judge Holeman's orders were "'so totally devoid of evidentiary support as to render them unconstitutional under the Due Process Clause of the Fourteenth Amendment' *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960)".

The petition also sought certiorari and/or certification of questions of law, posing the question:

> "Whether D.C. Code §10-503.18 entitles petitioner to removal/transfer of the underlying criminal case to the U.S. District Court for the District of Columbia, where, additionally, the record in the D.C. Superior Court establishes a long-standing pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government."

Lastly, the petition requested that the Court take "appropriate action" against Judge Holeman and the U.S. Attorney pursuant its mandatory "Disciplinary Responsibilities" under Canon 3D of the D.C. Code of Judicial Conduct [A-10].

In substantiation of her requested relief, petitioner filed a full copy of the D.C. Superior Court record. Simultaneously, she filed a motion to stay the trial pending adjudication of the mandamus/certiorari petition. Included was a request for disclosure by, and/or disqualification of, D.C. Court of Appeals judges pursuant to Canons 3E and F of the D.C. Code of Judicial Conduct [A-11-12a]. The basis was their long-standing personal and professional relationships with senior D.C. Superior Court judges – the supervisory judges, in particular – whose misconduct was exposed by the record. Petitioner stated that if the Court of Appeals judges were to discharge their mandatory "Disciplinary Responsibilities" under Canon 3(D)(1), their "closest judicial brethren may face disciplinary and criminal prosecution" as investigation would reveal:

> "the extent to which [Judge Holeman's] brazenly dishonest and corrupt conduct was not his own, but, rather, part of a collusive plan to 'protect' powerful U.S. Senators and Capitol Police by railroading petitioner to trial on this bogus 'disruption of Congress' charge, without the documents and witnesses to which she is entitled".

Because the "disruption of Congress" case exposed the corruption of federal judicial selection – involving influential Senators – petitioner noted that she had long questioned whether the case should be "tried in a court whose funding is voted on by those very senators", rather than in a court "less vulnerable to congressional pressure". She pointed out that both D.C.'s Superior Court and Court of Appeals are funded directly by Congress, that, upon information and belief, their Chief Judges accompany each other to Congress for such purpose, and that the judges of both courts are appointed by the president with the advice and consent of the Senate or one of its committees, in other words, by a process with parallels to federal judicial selection.

Two days later, on April 8, 2004, without awaiting or requesting a response from the U.S. Attorney or from Judge Holeman, a three-judge D.C. Court of Appeals panel, consisting of Judge Frank Q. Nebeker, and Judges Glickman and Farrell, denied petitioner all relief [A-34]. Their unsigned nine-sentence order omitted all the facts, law, and legal argument she had presented, including (1) that the requested mandamus was for judicial disqualification; (2) that the certiorari/certification related to the venue provision of the "disruption of Congress" statute, as to which the D.C. Court of Appeals was being asked to render an interpretive ruling; and (3) that petitioner had requested the Court's discharge of its "Disciplinary Responsibilities" under Canon 3(D) with respect to the misconduct of Judge Holeman and the U.S. Attorney, documented in the record before it. Also

omitted was petitioner's request for disclosure by the judges, of which there was none. As for disqualification, the order falsely represented, *inter alia*, that petitioner had "failed to identify any support for her blanket assertion that the courts and judges of this jurisdiction cannot be impartial in cases, such as her's, which involve the United States Congress" [A-35].

Post-Petition Proceedings in D.C. Superior Court

The following week Judge Holeman presided over petitioner's jury trial which, on April 20, 2004, concluded with her conviction – the result of a mountain of unsupported and insupportable pre-trial and trial conduct and rulings by him. These included: (1) violating her Sixth Amendment confrontation rights [A-1] by quashing, pursuant to the "Speech and Debate Clause" of the U.S. Constitution [A-1], her subpoenas for the testimony of the senators, including Senator Chambliss, purported to be the complainant by the underlying police reports; (2) barring petitioner from introducing into evidence the underlying police reports; (3) barring petitioner from mentioning that the true arresting officer, concealed by the underlying police reports, had been the subject of her 1996 police misconduct complaint, arising from her June 25, 1996 arrest in the hallway outside the Senate Judiciary Committee on the trumped-up disorderly conduct charge; (5) barring petitioner from informing the jury that such disorderly conduct charge had never gone to trial; (6) barring petitioner from mentioning the basis for CJA's opposition to Judge Wesley's confirmation; (7) barring petitioner from mentioning that Senators Clinton and Schumer, as New York's Senators, had the power to encumber, if not block, Judge Wesley's confirmation; (8) *sua sponte* interrupting and cutting off petitioner's opening and closing statements and her questioning of witnesses; (9) stationing a marshal behind petitioner and directly opposite the jury; (10) barring petitioner from testifying as to the events of May 19-22, 2003 pertaining to her

arrest, including what took place at the Senate Judiciary Committee's May 22, 2003 confirmation hearing – and her intent; (11) denying, with conclusory boilerplate, petitioner's two trial motions for judgment of acquittal which she made based on the dispositive nature of the videotape and her 39-page May 21, 2003 fax to Capitol Police [A-166; A-192].

On June 28, 2004, in face of a court services presentence report which did not recommend incarceration and a U.S. Attorney request for a five-day suspended incarceration, Judge Holeman sentenced petitioner to six months incarceration, a $500 fine, and $250 assessment under the Victims of Violent Crime Compensation Act [A-201] – all the maximum under the disruption of Congress statute. The six-month jail term was a superseding sentence which Judge Holeman imposed because petitioner exercised her right under D.C. Code §16-710 [A-3] to decline his conditions for suspending his initially-announced 92-day jail sentence [A-197]. Among these conditions: a two-year probation in which she was to stay away from all Capitol buildings and grounds; stay away from the Senators and Judge Wesley, including by telephonic and written communications; and keep daily time records of her work at CJA accurate to 1/10-hour increments. Additionally, she was to write "letters of apology" to the Senators and Judge Wesley expressing her "remorse for any inconvenience caused by [her] actions" [A-197-201].

Judge Holeman denied petitioner's request for a stay pending appeal, jailing her immediately [A-203].

Petitioner's Motions for Release from Incarceration Pending Appeal

On June 28, 2004, petitioner's legal advisor filed a notice of appeal and motion in the D.C. Court of Appeals for her release pending appeal (no. 04-CM-760). By an unsigned July 7, 2004 order [A-36], a three-judge panel denied the motion, without reasons and without affording petitioner an opportunity to reply to the U.S. Attorney's

opposition papers. The panel included Judge Nebeker, a panel member on the April 8, 2004 order denying mandamus/certiorari [A-34], who – unbeknownst to petitioner – had formerly been chief of the appellate division of the U.S. Attorney's office for the District of Columbia. Joining him were Judges Steadman and Reid – the latter having a twin brother, George Bundy Smith, a New York Court of Appeals judge who had participated with Judge Wesley in the corruption about which petitioner had requested to testify at the Senate Judiciary Committee's May 22, 2003 confirmation hearing and for which she was charged with "disruption of Congress". Such familial relationship was unknown to petitioner.

The incarcerated petitioner moved, *pro se*, for reargument, reconsideration, and renewal. Observing that the without-reasons July 7, 2004 order gave rise to an inference that the panel could not support its denial of her release pending appeal, petitioner stated that the sufficiency of her legal advisor's motion for her release was reinforced by the affidavit she had begun writing upon waking up in jail on June 29, 2004 which, but for the Court's premature denial of the motion, she would have filed in support. She annexed the handwritten affidavit to her motion as Exhibit C [A-204], describing it as highlighting with particularity, the "clear and convincing evidence" of Judge Holeman's pervasive actual bias – pretrial, at trial, and post-trial – requiring reversal of [her] conviction *as a matter of law* and meeting the standard for release under D.C. Code §23-1325(c) [A-5]. She challenged the U.S. Attorney to deny this and to confront the unconstitutionality of the disruption of Congress statute, *as written and as applied*, set forth in a draft memorandum of law [A-219] she had intended to hand-up at her June 28, 2004 sentencing, but had been unable to by Judge Holeman's conduct [A-215 (¶29(b)) A-196]. Petitioner's motion stated that what had taken place at the Senate Judiciary Committee's May 22, 2003 hearing was memorialized by a videotape, constituting "celluloid DNA". She described it as "incontrovertible

evidence, not supplanted by the adverse jury verdict".

Petitioner's motion also included five additional branches of relief: (2) sanctions against the U.S. Attorney for his materially deceitful opposition to her legal advisor's motion and for disclosure by him and culpable staff as to their knowledge of the record, including her mandamus/certiorari petition; (3) disqualification of Judge Nebeker for demonstrated actual bias based on the April 8, 2004 order; (4) disclosure by Judges Steadman and Reid, with similar disclosure by Judge Nebeker if he did not disqualify himself; (5) removal/transfer of the case to the U.S. Court of Appeals for the District of Columbia; and (6) such other and further relief as reinstating Judge Holeman's originally-announced 92-day sentence and vacating his superseding six-month sentence.

As to Judge Nebeker, petitioner provided an extensive analysis of the April 8, 2004 order [A-34] showing that it had concealed all the facts, law, and legal argument of her mandamus/certiorari petition because they were dispositive of her right to Judge Holeman's disqualification and transfer of the case. She stated that absent Judge Nebeker disqualifying himself, his duty was to confront this analysis.

As to Judges Steadman and Reid, petitioner requested disclosure, including: (1) whether they had personally reviewed her mandamus/certiorari petition, from which they would have seen that the April 8, 2004 order had wrongfully denied her relief to which she was entitled, *as a matter of law*; (2) whether the impartiality of their judgment was affected by their personal and professional relationships with the three judges who had rendered the April 8, 2004 order – or with "any other, whether on [the D.C. Court of Appeals], the D.C. Superior Court, or the New York Court of Appeals (past or present)"; and (3) whether they personally reviewed petitioner's underlying February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification [A-104, A-131] – from which they would have seen that petitioner was entitled to "immediate release from jail, as

Judge Holeman was without authority to proceed further in face of such timely and sufficient motions".

Petitioner additionally questioned whether Judge Reid's fairness and impartiality were affected by the fact that the mandamus petition exposed that the Court's *Anderson* decision, in which Judge Reid participated, had denied the judicial disqualification sought by the criminal defendant therein on an incorrect statement of law that "judicial rulings" are "legally insufficient to establish bias requiring recusal" – a proposition *Liteky* had rejected six years earlier.

As for removal/transfer, petitioner stated that such was compelled by the record of the case in the D.C. Superior Court, now supplemented by the record at the D.C. Court of Appeals.

The U.S. Attorney again opposed petitioner's release. Petitioner's reply papers demonstrated such opposition to be even more deceitful than his opposition to her legal advisor's motion for her release and sought additional sanctions, disclosure, and disciplinary and criminal referrals of him and culpable staff pursuant to Canon 3D. Petitioner highlighted that the U.S. Attorney had not denied or disputed any of the facts, law, or legal argument presented by her Exhibit C affidavit [A-204] or her draft memorandum of law [A-219] – nor her contention that these demonstrated her entitlement to reversal of her conviction, *as a matter of law*, and to release under D.C. Code §23-1325(c) [A-5] and D.C. Court of Appeals Rule 9 [A-8], pursuant to which she had made express application. Indeed, petitioner emphasized that the U.S. Attorney, in opposing her release, had not even been willing to assert – as her motion had challenged him to – that she had had due process.

By the time petitioner's reconsideration motion was fully submitted on September 13, 2004, she had been incarcerated more than 2-1/2 months – a span attributable to procedural roadblocks the D.C. Court of Appeals had subjected her to [A-38]. She memorialized this in further motion papers, seeking clarification and

disclosure, including as to whether she was being invidiously treated.

By a six-sentence unsigned September 16, 2004 order [A-40], Judge Reid, joined by Judge Terry, another former appellate chief of the U.S. Attorney for the District of Columbia, and by Judge Newman, ignored the requested clarification/disclosure and denied the reconsideration motion. Concealing that at issue was petitioner's release from incarceration – as to which they made no finding, nor even a claim, that she had not met the standard for release under D.C. Code §23-1325(c) and Rule 9. – their order asserted:

> "Appellant continues to rely upon the arguments made in her petition for a writ of mandamus, no. 04-OA-17. However, this court has considered and rejected those arguments on two occasions; first, in its order denying mandamus relief, and second, in its order denying appellant's motion for release pending appeal. On this third iteration they remain, insufficient and unpersuasive." [A-40]

In so doing, the order identified none of the facts, law, or legal argument of the mandamus/certiorari petition nor petitioner's showing that the Court's prior two "iterations" – its April 8, 2004 and July 7, 2004 orders [A-34, A-36] – had also not identified any of the petition's facts, law, or legal argument. Nor did the order identify petitioner's Exhibit C affidavit [A-204] and her draft memorandum of law [A-219] – both uncontested by the U.S. Attorney – establishing petitioner's entitlement to release, apart from her mandamus/certiorari petition.

As for the "other relief" sought by the motion, the order identified none of it, including its requested disqualification/disclosure, of which there was none.

Petitioner's Motions & Expedited Appeal to Prevent Mootness

A week later, as petitioner's incarceration

approached the day on which she should have been released under Judge Holeman's originally-announced 92-day sentence, her newly-serving *pro bono* counsel made an "Unopposed Emergency Motion for [Petitioner's] Release to Preclude Mootness of Appellate Issue". The issue sought to be preserved for appeal was "the validity of any sentence exceeding 92 days' imprisonment". Judge Reid, with Judges Farrell and Terry, denied it by a two-sentence unsigned September 23, 2004 order [A-42], without prejudice to "refiling in Superior Court" – meaning before Judge Holeman.

Upon Judge Holeman's one-sentence, without-reasons denial of the refiled motion [A-43], likewise unopposed by the U.S. Attorney, *pro bono* counsel filed a notice of appeal and perfected same by an October 6, 2004 "Emergency Appeal" (04-C0-1239) which, simultaneously, sought petitioner's release under Rule 9b [A-8]. Here, again, the U.S. Attorney expressly did not oppose petitioner's release. Nevertheless, Judge Nebeker, joined by Judges Glickman and Washington, denied release. Their two-sentence unsigned October 14, 2004 order [A-44, A-46] purported that that the "Emergency Appeal" was being "construed" as a "D.C. App. R.9 (b) motion for release", which they were denying because petitioner had "failed to show reversible error under D.C. Code §23-1325 (c)". This, without identifying any of the facts, law, or legal argument presented by the "Emergency Appeal", from which appellate reversal was "likely" – the standard for release under §23-1325 [A-5]. Their order then thwarted appellate adjudication by *sua sponte* dismissing the "Emergency Appeal" as "unnecessarily duplicative of appeal no. 04-CM-760" – without revealing that appeal no. 04-CM-760 was not yet perfected and that the sole appellate issue of the perfected "Emergency Appeal" was preventing mootness, as to which the three-judge panel did not rule.

On October 26, 2004, petitioner's *pro bono* counsel made a motion before Judge Holeman challenging the legality and constitutionality of the superseding six-

month jail sentence, pursuant to D.C. Code §23-110(a) [A-4] and D.C. Superior Court Criminal Rule 35a [A-6]. Judge Holeman denied it by a November 22, 2004 order [A-46] whose multitudinous falsehoods included concealing that his originally-announced sentence was 92 days. *Pro bono* counsel filed a notice of appeal therefrom on December 21, 2004. (no. 04-CO-1600). Petitioner remained incarcerated until December 23, 2004, the end of the six-month sentence.

Petitioner's June 28, 2005 Perfected Appeal & Related Motions

On June 28, 2005 – a year to the day from the June 28, 2004 date of petitioner's sentencing and incarceration – she perfected her two consolidated appeals (04-CM-760 & 04-CO-1600). The four appellate issues she presented [ii-iii herein] were precisely the same as she had summarized by her handwritten Exhibit C affidavit that she had submitted to the Court 11 months earlier to secure release pending appeal [A-204]. Her first appellate issue was Judge Holeman's pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky*; her second issue was her entitlement to removal/transfer of the case to federal court pursuant to the venue provision of the disruption of Congress statute [A-238(*)]; her third issue was the unconstitutionality of the disruption of Congress statute, *as written and as applied* [A-240(*)], and reproduced, virtually *verbatim*, her previously-submitted draft memorandum of law on the subject [A-219]; her fourth issue was the appropriateness and constitutionality of Judge Holeman's probation conditions and the lawfulness and constitutionality of the superseding six-month jail sentence he imposed when petitioner exercised her right under D.C. Code §16-710 to decline those conditions [A-252, A-230].

Petitioner's brief was 119 pages – 97 devoted to her first issue: Judge Holeman's pervasive actual bias meeting the "impossibility of fair judgment" standard of

Liteky [A-230]. Simultaneously, she filed a procedural motion to exceed page limits or, alternatively, for time to revise her brief within page limits prescribed by the Court based on a ruling as to the particularity required to establish the "impossibility of fair judgment" standard of *Liteky*. Petitioner stated that in the 11 years since *Liteky*, the D.C. Court of Appeals had never made such ruling. She pointed out that since the definition of "pervasive" is everywhere, her brief could not rest on any one of Judge Holeman's profusion of reversible error. Rather, it had to span the course of the proceeding before him to demonstrate the pervasiveness of his actual bias, entitling her to disqualification on that ground.

Petitioner further pointed out that the 97-page showing of her brief – and her separate chronological recitation by her 161-page supplemental fact statement – were also relevant to her second appellate issue: whether D.C. Code §10-503.18 entitled her to removal/transfer to the federal court "where, additionally, the record establishes a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government". Petitioner stated that if the statute were to be interpreted as requiring a criminal defendant to make a showing of bias in the D.C. Superior Court to secure venue in the U.S. District Court, the 97 pages of her brief particularizing Judge Holeman's pervasive actual bias were germane the sufficiency of her showing for change of venue.

Petitioner's procedural motion additionally contained three other branches of relief: (a) permission to lodge original trial exhibits, whose exclusion by Judge Holeman was encompassed by her appeals; (b) incorporation of the record of her April 6, 2004 mandamus/certiorari petition, as well as of her October 6, 2004 "Emergency Appeal"; and (c) a conference pursuant to D.C. Court of Appeals Rule 14 [A-8] to address any or all of the foregoing - or such other matters as "may aid in resolving the appeal".

By an unsigned six-sentence July 14, 2005 order [A-54], Judge Reid, joined by Judges Glickman and Pryor, denied the procedural motion, without reasons, without identifying any of the facts, law, or legal argument the motion had presented, and by materially concealing the motion's four branches of relief.

Petitioner moved for reconsideration, combining a request that the panel disqualify itself for actual bias and interest and for disclosure. Petitioner showed that the July 14, 2005 order did not reflect a fair and impartial tribunal and that absent reasoned adjudication of the four actual branches of her procedural motion, the panel was duty-bound to disqualify itself and, failing that, to make disclosure. Petitioner specified this to include the disclosure Judges Reid and Glickman were required to have previously made, but had not: Judge Glickman in adjudicating her mandamus/certiorari petition [pp. 11-12, *supra*] and Judge Reid in adjudicating her reargument/reconsideration motion for release from incarceration [p. 16-17, *supra*].

Petitioner further stated that because all four of her appellate issues were not only "far-reaching and substantive", but of "first impression", giving the Court "the opportunity, if not the obligation to make law", *en banc* initial hearing of the appeals was warranted. She asked that the reconsideration motion also be referred to the Court *en banc*, stating that she would promptly bring a formal petition for *en banc* review, which she thereupon did.

Petitioner's petition for *en banc* initial hearing identified the showing in her reconsideration motion that the Court's prior orders had not reflected a fair and impartial tribunal, focusing, in particular, on the October 14, 2004, April 8, 2004, July 7, 2004, and September 16, 2004 orders, in addition to the July 14, 2005 order [A-44, A-45, A-34, A-36, A-40, A-54]. Based thereon, the petition requested that those of the Court's judges who could not be fair and impartial, disqualify themselves and, that the judges not disqualifying themselves, make disclosure

with respect to the prior orders.

By an unsigned, eight-sentence August 5, 2006 order [A-56], a three-judge panel consisting of Judges Reid, Glickman, and Nebeker, denied petitioner's unopposed reconsideration motion. Except for a sentence containing a string of court rules and caselaw citations, uncorrelated, inapposite, and, as to *Liteky*, outrightly false in purporting that "judicial rulings alone do not constitute bias requiring recusal", they gave no reasons. Their order identified none of the relief requested by petitioner's motion – nor any of the facts, law and legal argument it had presented. This included petitioner's requested disqualification and disclosure, of which there was none.

By an unsigned one-sentence October 5, 2005 order [A-58], petitioner's unopposed August 4, 2005 petition for *en banc* initial hearing was denied: no judges in regular active service having requested a vote thereon – these being Chief Judge Washington, and Judges Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman, and Kramer. The order did not identify the petition's request for disqualification and disclosure – and there was none.

Petitioner's October 14, 2005 Motion for Disqualification, Disclosure, Transfer/Removal, etc.

On October 14, 2005, petitioner moved to disqualify the D.C. Court of Appeals for pervasive actual bias and interest and for removal/transfer of the appeals to the U.S. Court of Appeals for the District of Columbia. Her 29-page affidavit demonstrated that the August 5, 2005 and October 5, 2005 orders were the latest in a long series of orders concealing her requested disqualification/disclosure and denying her relief to which she was entitled, *as a matter of law*, without reasons or by demonstrably false reasons. She stated that the record spanning from her April 6, 2004 mandamus/certiorari petition to her August 4, 2005 petition for *en banc* initial hearing of the appeals established that there was "no cognizable judicial

process" and that the Court was operating "by unsigned edicts bearing no resemblance to the uncontroverted, indeed uncontested and controlling facts, law, and legal argument before it – all of which it conceals or falsifies". Petitioner characterized the Court's continuum of unsigned orders as readily-verifiable judicial frauds – and stated that participating judges were disqualified for pervasive actual bias, absent extenuating explanation.

Petitioner asserted that the correct interpretation of *Liteky* had always been dispositive of her rights – for which reason none of the Court's prior orders in her case had cited it or purported that judicial rulings could not constitute grounds of disqualification. The August 5, 2005 order was the first to do so, falsely representing *Liteky* as standing for that proposition and additionally implying, falsely, that she had presented judicial rulings "alone" [A-56], when, both as to Judge Holeman and the Court, she had also identified extrajudicial factors impinging on fairness and impartiality.

Petitioner stated that the Court's judges had an interest in not acknowledging what *Liteky* held because their succession of fraudulent orders met the *Liteky* "impossibility of fair judgment" standard, establishing their own pervasive actual bias. As such, they had an interest in her first appellate issue – an interest compounded by the fact that it encompassed Judge Holeman's failure to make, or even identify, requested disclosure. Petitioner asserted "The Court will be constrained from ruling...that failure to make requested disclosure is *prima facie* disqualifying.... For it to do so would require it to find itself guilty of the same misconduct". Indeed, petitioner asserted that the parallels between her entitlement to Judge Holeman's disqualification/disclosure and disqualification/disclosure by the Court's judges were such that they would "in essence be deciding 'their own case'".

Petitioner also showed that the Court's interest extended to her three other appellate issues. All were before the Court by her mandamus/certiorari petition and

during her incarceration by her reconsideration motion, whose Exhibit C affidavit itself laid out the four appellate issues "in miniature" [A-204]. She stated that this gave the Court an interest in impeding exposition and disposition of these same issues on appeal as an appellate ruling in her favor – let alone by the resounding, law-making rulings to which she was entitled – would establish the maliciousness of the Court's prior orders in concealing all the facts, law, and legal argument she had presented because they were dispositive of her rights, both as to mandamus/certiorari and release from incarceration pending appeal.

Petitioner pointed out a further issue in which the Court had an interest: the U.S. Attorney's litigation misconduct, as to which the Court had a mandatory duty to take "appropriate action" pursuant to Canon 3D of the D.C. Code of Judicial Conduct [A-10]. This included against the U.S. Attorney's appellate division chief, John Fisher, whose misconduct had been focally-presented by petitioner's reargument/consideration motion for release from incarceration. Petitioner showed that the September 16, 2004 order denying that motion, in which Judge Terry had participated [A-40], had not only concealed her explicitly-requested relief against Assistant U.S. Attorney Fisher, but critical extrajudicial facts. Among these: that Judge Terry, as likewise Judge Nebeker, had each been appellate division chiefs in the same U.S. Attorney's office as AUSA Fisher. Moreover, that AUSA Fisher had worked directly under Judge Terry, including as his deputy chief. Indeed, AUSA Fisher had an application pending to be a D.C. Court of Appeals judge during the very period in which petitioner's aforesaid reargument/reconsideration motion was before Judge Terry.

Petitioner also showed that D.C. Superior Court Chief Judge Noel Anketell Kramer had likewise become a D.C. Court of Appeals judge by the Court's comparable disregard for its Canon 3D, E, and F responsibilities when she brought her mandamus/certiorari petition.

As to removal/transfer, petitioner stated that her good and sufficient grounds were presented by her reargument/reconsideration motion during her incarceration and that she could not improve on them, except to state the obvious:

> "that the Court's subsequent actions...establish, *prima facie*, [its] wilful and deliberate obliteration of any cognizable judicial process and jettisoning of mandatory ethical rules – Canon 3D, E, and F of the Code of Judicial Conduct for the District of Columbia Courts – designed to ensure the integrity of judicial proceedings."

Petitioner's motion further stated that if any of the Court's judges harbored doubt as to the disciplinary and criminal consequences of the orders rendered in her case, they should seek an advisory opinion from D.C.'s Advisory Committee on Judicial Conduct – noting that the three of its five members were D.C. Court of Appeals judges: Glickman, Steadman, and its chair, Judge Vanessa Ruiz.

The U.S. Attorney filed no response.

The Unsigned October 27, 2005 Barring Order

Petitioner's unopposed October 14, 2005 motion was not adjudicated by the Court *en banc*, but by Judges Reid, Glickman, and Nebeker alone. Their unsigned five-sentence October 27, 2005 order [A-59] denied the motion without reasons and without identifying any of the facts, law, and legal argument petitioner presented – including her request for disqualification and disclosure. Rather, their order directed the Court's Clerk to accept no further filings from petitioner except for her "conforming brief on the merits, due on November 7, 2005", and a "conforming reply brief, if any, due within 21 days after the filing of appellee's brief on the merits". Such direction was made *sua sponte* and without affording petitioner any notice or opportunity to be heard, in contrast to *Corley v. United States*, 741 A.2d 1029 (1999) – the sole cited case,

prefaced by an inferential "*See*". The order justified its direction by claiming that petitioner had "presented numerous times and without success" the requests made and that her "insistence on raising them yet again constitutes an abuse of this court's processes." It gave no details as to the nature of these repetitive requests, did not purport that their previous presentation had been frivolous, did not purport that their presentation by her October 14, 2005 motion was frivolous, and failed to identify a single reasoned adjudication responsive to any of these requests.

Petitioner's Requests for Supervisory Oversight & Judicial Misconduct Complaint

Upon receipt of the October 27, 2005 order [A-59], petitioner telephoned the chambers of D.C. Court of Appeals Chief Judge Washington, imploring his supervisory oversight. She explained that the consequence of the barring order was to prevent her from challenging it judicially and to railroad her appeals before a court disqualified for pervasive actual bias and interest. She requested that he personally examine the casefile, specifically, her October 14, 2005 disqualification motion and the panel's October 27, 2005 order, and that he also bring them to the attention of the Court's other judges so that they could make their own determinations as to their disciplinary and criminal liability [A-260].

In the absence of any response, petitioner timely filed her "conforming brief on the merits". Its 50 pages was a repaginated *verbatim* repetition of her June 28, 2005 brief from which she had removed 63 sequential pages of her POINT I as to Judge Holeman's pervasive actual bias at trial and post-trial [A-230]. Otherwise the four appellate issues and argument were intact [A-238, A-240, A-252], substantiated by a three-volume, 1784–page appendix of the record, supporting the brief's conclusion:

> "WHEREFORE, vacatur/reversal is mandated, as a matter of law, as are disciplinary and criminal

> referrals of D.C. Superior Court Judge Brian Holeman and the U.S. Attorney for the District of Columbia pursuant to Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts."

Two months later, still without response from the Chief Judge, petitioner sent him a January 10, 2006 letter [A-257], reiterating and supplementing her request for his supervisory and disciplinary oversight pursuant to Canon 3C and D. She asked that he confirm that he had "personally examined" her October 14, 2005 disqualification motion and the October 27, 2005 order; "had brought both to the attention of the Court's other judges for their "personal review"; and that neither he nor they had "deemed it appropriate to recall the October 27, 2005 order and responsively adjudicate the October 14, 2005 motion" [A-260]. She additionally requested information that would enable her to confirm that the October 27, 2005 barring order was "unprecedented, first-ever" and further evidence of the Court's invidious treatment of her [A-259, fn. 2].

Petitioner's letter also updated the Chief Judge as to the continuing misconduct of Judges Reid, Glickman, and Nebeker, blocking her from routinely-granted procedural relief and making obvious that she would also be blocked from safeguarding her appeal by a substantive motion for the U.S. Attorney's disqualification and sanctions, should his appellee's brief violate his obligations under ethical rules of professional responsibility. She stated that these three judges

> "rather than embracing [her] elucidation of the facts and law pertaining to the judicial misconduct of Judge Holeman, the prosecutorial misconduct of the U.S. Attorney's office, and the disqualification of each,...want only to curtail it so as to skew, if not avoid, its determination." [A-263]

Petitioner closed by noting that Judges Reid,

Glickman, and Nebeker, or court personnel, had apparently "destroyed or secreted the most incriminating evidence of their cover-up of the judicial and prosecutorial misconduct below, *to wit*, [her] 119-page appellant's brief and 161-page supplemental fact statement". These were missing from the court file – and petitioner requested that the Chief Judge direct an inquiry and apprise her of the results [A-263-264].

Chief Judge Washington did not respond. Six weeks later, petitioner sent a February 22, 2006 letter to the D.C. Commission on Judicial Disabilities and Tenure [A-265], constituting a judicial misconduct complaint against him for

> "covering up the corruption of the judicial process by his fellow judges of the D.C. Court of Appeals, itself covering up the corruption of the judicial process by D.C. Superior Court Judge Brian F. Holeman, aided and abetted by [supervisory] D.C. Superior Court judges...as *readily verifiable* from the record before those judges in the "disruption of Congress" case." [A-266].

The complaint, which was also against these other D.C. judges, stated that the Chief Judge's wilful failure to respond to her January 10, 2006 letter or otherwise discharge his mandated administrative and disciplinary responsibilities "constitute[d] judicial misconduct *per se* – unless Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts [were] to be stripped of their mandatory and hortatory meaning" [A-271]. It also showed that the Chief Judge was himself involved in the complained-of corruption by his participation in two prior orders [A-44, A-46, A-58].

Petitioner sent a copy of the complaint to Chief Judge Washington "for himself & all complained-against D.C. Court of Appeals and Superior Court judges" [A-280]. She received no response.

The Chief Judge's Order as to the Videotape

The U.S. Attorney thereafter filed a "motion to release evidence". The referred-to evidence was the videotape of the Senate Judiciary Committee's May 22, 2003 hearing which the U.S. Attorney had introduced at trial and now sought to have the D.C. Superior Court return "so that it may be utilized to prepare the government's response to appellant's brief on appeal". Upon petitioner's vigorous opposition to giving custody of this "celluloid DNA" to the U.S. Attorney, Chief Judge Washington signed a one-sentence March 15, 2006 order [A-61], "granting" the U.S. Attorney's motion "construed as a motion to supplement the record", and directing the Clerk of the D.C. Superior Court to "prepare and transmit the videotape to this court as a supplemental record".

Petitioner's Reply to the U.S. Attorney's Brief

The U.S. Attorney filed its opposition brief on March 10, 2006, having previously obtained extensions of time. Petitioner, however, was unable to obtain an extension for her reply brief because of the barring order. Her motion for such relief was returned, unfiled. On April 4, 2006, she timely filed her reply. Its conclusion, substantiated by 20 preceding pages, was:

> "The U.S. Attorney's opposition brief is an outright 'fraud on the court', intended to subvert the appellate process on [petitioner's] consolidated appeals. Unless immediately withdrawn, it reinforces this Court's mandatory disciplinary responsibilities pursuant to Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts to sanction the U.S. Attorney and refer him for disciplinary and criminal investigation and prosecution."

Calendaring of Appeals & Denial of Oral Argument

Nearly 5-1/2 months later, the Court placed petitioner's appeals on the summary calendar for October

17, 2006, thereby requiring her to make a written request for oral argument.

Petitioner did so in a letter which also requested information as to why her appeals – which had commanded two *amicus curiae* briefs[7] – had not been placed on the regular calendar, where oral argument was automatic. She further requested the names of the judges involved in such calendaring decision.

By a two-sentence September 15, 2006 order signed by the Court's Clerk "on behalf of the merits division assigned to consider this matter" [A-63], petitioner's unopposed request for oral argument – which was deemed a "motion" – was denied. No reasons were given, nor other information provided.

Petitioner's October 16, 2006 Letter/Motion for Disqualification, Disclosure, Transfer

Not until October 12, 2006 did the Court release the names of the "merits division assigned": Judges Frank Q. Nebeker, Noel Anketell Kramer, and Vanessa Ruiz. Immediately, petitioner informed the Court's Chief Deputy Clerk that Judges Nebeker and Kramer were absolutely disqualified and should have *sua sponte* recused themselves. In response to petitioner's inquiry as to the proper procedure for securing the panel's disqualification, the Chief Deputy Clerk stated she was unaware of any procedure.

Petitioner thereupon addressed an October 16, 2006 letter to Chief Judge Washington and the three-judge appellate panel, requesting the panel's disqualification for demonstrated actual bias and for

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[7] These were from Professor Andrew Horwitz, Director of Clinical Programs at Roger Williams University Law School and author of "*Coercion, Pop-Psychology and Judicial Moralizing: Some Proposals for Curbing Abuse of Probation Conditions*", 57 Wash. & Lee L. Rev 75 (2000), whose 25-page *amicus curiae* brief addressed the fourth appellate issue, and the D.C. National Lawyers Guild, whose *amicus curiae* brief addressed the third issue.

interest in the outcome of her four appellate issues [A-282]. She stated that absent disqualification, the duty of each judge was to address the specific facts set forth by her letter pertaining to their disqualification, "both as to themselves and as to their judicial brethren of which they had knowledge" [A-289]. In that connection, petitioner "expressly" called upon them to disclose their knowledge of the "breathtaking extrajudicial fact" of which she had only just become aware – and then by accident: that Judge Reid's twin brother was a sitting judge on the New York Court of Appeals and had participated with Judge Wesley in the corruption about which petitioner had requested to testify and for which she was arrested for "disruption of Congress". Petitioner asserted that such was "sufficient in and of itself to have motivated Judge Reid's lawless conduct and to have influenced their own" [A-289].

The U.S. Attorney filed no response.

The December 20, 2006 Memorandum Opinion and Judgment & Petitioner's Petition for Rehearing, Rehearing *En Banc*, Etc.

On December 20, 2006, Judges Ruiz, Kramer, and Nebeker issued their Memorandum Opinion and Judgment [A-13]. To this, petitioner filed a January 2, 2007 petition for rehearing and rehearing *en banc*, joined with a motion to vacate for fraud and lack of jurisdiction, disqualification, disclosure, and transfer [A-297]. Describing the 3-1/2 page Opinion and Judgment as "a judicial fraud, being insupportable factually, legally, and knowingly so", the petition stated:

> "It affirms [petitioner's] conviction and sentence for 'disruption of Congress' by materially falsifying her four appellate issues[fn] and then disposes of each by false factual and legal assertions that are completely conclusory and which ignore ALL the contrary specific facts, law and legal argument she presented, because they are dispositive of her

rights. This is accompanied by the panel's own fictionalized account of the 'disruption of Congress' incident – for which it provides no record reference and whose fraudulence is verifiable from the videotape of the incident, in the possession of the [D.C. Court of Appeals]. The dispositive nature of the videotape in establishing that what [petitioner] did at the U.S. Senate Judiciary Committee's May 22, 2003 judicial confirmation hearing could not constitute 'disruption of Congress', *as a matter of law*, and that she was prosecuted on materially false and misleading prosecution documents – which any fair and impartial tribunal would have thrown out, 'on the papers' – was centrally presented by petitioner's appeal, but is concealed, without adjudication, by the Opinion and Judgment.

Such Opinion and Judgment, making NO claim that [petitioner] had due process either before Judge Holeman or before this Court in any of the prior related proceedings is the latest unconstitutional manifestation of the actual bias and interest of the panel, whose disqualification [petitioner] sought by an October 16, 2006 letter-application – the existence of which the Opinion and Judgment also conceals, without adjudication."

The U.S. Attorney filed no response.

By an unsigned two-sentence March 20, 2007 order [A-20], Judges Ruiz, Kramer, and Nebeker denied the unopposed rehearing petition, without reasons. The same order also denied the petition for rehearing *en banc* – no judges having called for a vote on it. A single judge was noted as having "recused himself from these cases – Judge Fisher, formerly AUSA appellate chief.

Not noted by the order was petitioner's motion for disqualification/disclosure by the Court's other judges, transfer and vacatur of the Memorandum Opinion and Judgment for fraud and lack of jurisdiction [A-299].

REASONS FOR GRANTING THE WRIT

This Court has direct jurisdiction over the D.C. Court of Appeals. Where, as here, a petition presents "reliable evidence" that D.C.'s highest court has flagrantly corrupted the judicial process to deprive a petitioner and the public of honest adjudication of far-reaching appellate issues, each of constitutional magnitude, to which they were constitutionally entitled, this Court's supervisory obligations are mandatory, as likewise its role-model responsibilities.

It is a Constitutional Violation, *Prima Facie* Disqualifying, and Misconduct *Per Se* for a Court to Wilfully Fail to Adjudicate a Motion for its Disqualification and for Disclosure – and It Has No Jurisdiction to Proceed Further in the Matter

This Court has recognized that "[A] biased decisionmaker [is] constitutionally unacceptable", *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), and "motions for change of venue to escape a biased tribunal raise constitutional issues both relevant and essential", *Holt v. Virginia*, 381 U.S. 131, 136 (1965). Consequently, a motion to disqualify a court for bias and interest and to change venue necessarily raises constitutional issues which cannot be left unadjudicated without compounding the potential constitutional violation.

A court's wilful failure to adjudicate such motion must be deemed *prima facie* disqualifying and misconduct *per se* as the inference reasonably drawn is that adjudication would compel conceding the facts and law entitling relief. That a court would conceal the motion's very existence only reinforces this, II Wigmore on Evidence §278 at 133 (1979).

Absent adjudication of a pending disqualification/disclosure motion, a court must be deemed without jurisdiction to proceed further, *See* 48A Corpus Juris Secundum, §145; Judicial Disqualification:

Recusal and Disqualification of Judges, §22.1, Richard E. Flamm, Little, Brown & Company (1996).

The D.C. Court of Appeals was Disqualified from these Appeals, Requiring Transfer, Including Pursuant to D.C. Code §10-503.18

The record establishes again and again during 2-1/2 years of proceedings in the D.C. Court of Appeals that its judges wilfully concealed and failed to adjudicate petitioner's requests for their disqualification, for disclosure, and for change of venue. Such conduct suffices to have disqualified them from the appeals, apart from the factual and legal baselessness of their orders, meeting the "impossibility of fair judgment" standard of *Liteky*.

Tellingly, the Memorandum Opinion and Judgment conceals [A-16] that petitioner's second appellate issue asked whether she would be entitled to removal/transfer to federal court under D.C. Code §10-503.18 based on a record showing "a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism by the government" [A-306] – and that her brief had identified the record to include the D.C. Court of Appeals proceedings herein [A-239 (fn. 13].

The Memorandum Opinion & Judgment Further Manifests the D.C. Court of Appeals' Pervasive Actual Bias and Interest as it is Materially False and Knowingly So, Making it Additionally Unconstitutional

In denying rehearing and rehearing *en banc*, the D.C. Court of Appeals did not deny or dispute petitioner's particularized showing that its Memorandum Opinion and Judgment further manifested "its pervasive actual bias, born of interest" [A-297]. Such Opinion and Judgment, demonstrated to be materially false, unsupported – and flagrantly so – is additionally unconstitutional under the Due Process Clause. *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

This Court's Supervisory & Ethical Duties Mandate "Appropriate Action" When a Cert Petition Presents "Reliable Evidence" of Judicial Misconduct and Corruption

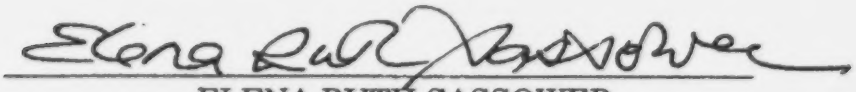
Codes of judicial conduct uniformly require that judges "take appropriate action" when they receive "reliable evidence" of judicial misconduct. Among these, the Code of Conduct for United States Judges, to which this Court's Justices look for guidance, Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993). As the Court plays a vital role-model function, its adherence to such codes is critical, "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, Santa Clara Law Review: Vol. 22, pp. 95-116 (1982).

This petition presents "reliable", indeed readily-verifiable, evidence of corrupt, lawless conduct by D.C. judges – triggering the Court's "appropriate action" under the Codes. In addition to disciplinary and criminal referrals, such requires redress of the injury done to petitioner and the public by the Memorandum Opinion and Judgment's dishonest, insupportable adjudications of the four appellate issues petitioner presented – each of constitutional magnitude and public importance.

Illustrative is petitioner's challenge to the constitutionality of the disruption of Congress statute, *as written and as applied*. The Memorandum Opinion rejects the challenge by claims [A-17] whose knowing falsity are instantly apparent from her appellate brief [A-240, 307]. Based thereon, any fair and impartial tribunal would have been compelled to strike the statute as unconstitutional in both respects and to reaffirm that "a citizen's respectful request to testify at a congressional committee's public hearing is not – and must never be deemed to be – 'disruption of Congress'". Such must now be done by this Court, with rulings similarly reaffirming of basic constitutional principles as to the three other appellate issues of petitioner's brief [A-230, A-238, A-252]

VERIFICATION

I am the petitioner *pro se* herein and have written the foregoing Petition for a Writ of Certiorari in its entirety, which I declare to be true and correct under penalty of perjury.



ELENA RUTH SASSOWER

Dated: August 17, 2007
White Plains, New York

CONSTITUTIONAL, STATUTORY, COURT RULE, AND ETHICAL PROVISIONS

UNITED STATES CONSTITUTION

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States.

Speech and Debate Clause (Article I, §6)

The Senators and Representatives...shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place...

First Amendment

Congress shall make no law...abridging the freedom of speech...or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be...deprived of life, liberty, or property, without due process of law...

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

DISTRICT OF COLUMBIA STATUTES

D.C. Code §10-503.16
"Unlawful conduct"

(b) It shall be unlawful for any person or group of persons willfully and knowingly:

...

(4) To utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any deliberations of, any committee or subcommittee of the Congress or either House thereof.

D.C. Code §10-503.18
"Prosecution and punishment of offenses"

(c) ...Prosecution for any violation of §10-503.16(a) or for conduct which constitutes a felony under the general laws of the United States or the laws of the District of Columbia shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of this part may be in the Superior Court of the District of Columbia. ....

D.C. Code §16-710
"Suspension of imposition or execution of sentence"

(a) ...in criminal cases in the Superior Court of the District of Columbia, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, or impose sentence and suspend the execution of a portion thereof, for such time and upon such terms as it deems best, if it appears to the satisfaction of the court that the ends of justice and the best interest of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, or the imposition of sentence and the suspension of the execution of a portion thereof, the court may place the defendant on probation under the control and supervision of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. A person may not be put on probation without his consent.

D.C. Code §23-110
"Remedies on motion attacking sentence"

(a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia; (2) the court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside, or correct the sentence.

(b) A motion for such relief may be made at any time.

(c) Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the Court finds that (1) the judgment was rendered without jurisdiction, (2) the sentence imposed was not authorized by law or is otherwise open to collateral attack, (3) there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner, resentence him, grant a new trial, or correct the sentence, as may appear appropriate.

(d) A court may entertain and determine the motion without requiring the production of the prisoner at the hearing.

(e) A court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

(f) An appeal may be taken to the District of Columbia Court of Appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(g) An application for a writ of habeas corpus on behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

D.C. Code §23-1325
"Release...after conviction"

(c) A person who has been convicted of an offense and sentenced to a term of confinement or imprisonment and has filed an appeal or a petition for a writ of certiorari shall be detained unless the judicial officer finds by clear and convincing evidence that (1) the person is not likely to flee or pose a danger to any other person or to the property of others, and (2) the appeal or petition for a writ of certiorari raises a substantial question of law or fact likely to result in a reversal or an order for new trial. Upon such findings, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

(d) The provisions of section 23-1324 shall apply to persons detained in accordance with this section, except that the finding of the judicial officer that the appeal or petition for writ of certiorari does not raise by clear and convincing evidence a substantial question of law or fact likely to result in a reversal or order for new trial shall receive de novo consideration in the court in which review is sought.

DISTRICT OF COLUMBIA COURT RULES

D.C. Superior Court Criminal Rule 16
"Discovery and inspection"

(a) Governmental disclosure of evidence.

(1)(C) Documents and tangible objects. Upon request of the defendant, the prosecutor shall permit the defendant to inspect and copy...papers, documents,...tangible objects...which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense, or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(d) Regulation of discovery

(2) Failure to comply with a request. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this Rule, the Court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other orders as it deems just under the circumstances. The Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

D.C. Superior Court Criminal Rule 35
"Correction or reduction of sentence or collateral; setting aside forfeiture"

(a) Correction of sentence. The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

D.C. Superior Court Criminal Rule 57
"Rules of court"

(a) Applicability of Civil Division Rules. Of the Rules regulating practice in the Civil Division of the Superior Court, the following Rules shall apply to the Criminal Division:...Rule 63-I (Bias and prejudice of a judge)...

D.C. Superior Court Civil Rule 63-I
"Bias or prejudice of a judge"

(a) Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-I(b), to hear such proceeding.

(b) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time.

D.C. Court of Appeals Rule 9
"Release or Detention in a Criminal Case"

The Superior Court must state in writing, or orally on the record, the reasons for any order detaining a defendant in a criminal case. ... A request for relief by this court from an order of detention must be accompanied by an affidavit executed by the party or attorney requesting the relief, addressing each point enumerated in Form 6. Additionally:

(b) Release or Detention After Judgment of Conviction. A party requesting review of an order regarding release or detention after a judgment of conviction must file a notice of appeal from that order in the Superior Court, or a motion in this court if the party has already filed a notice of appeal from the judgment of conviction. The party must then follow the relevant procedures stated in Rule 4(c)(1) (Expedited Appeals). The papers filed must include a copy of the judgment of conviction.

D.C. Court of Appeals Rule 14
"Appeal Conferences"

(a) Purpose of Conference. The Court, sua sponte or upon motion of a party, may direct the attorneys to participate in one or more conferences to address any matter that may aid in resolving the appeal. This may include simplifying the issues, discussing the status of record preparation...and, in a non-criminal appeal, discussing settlement. A judge or other person will be designated by the court to preside over the conference.

(b) Attendance at Conference. Parties themselves are not required to attend an appeal conference except when a party is not represented by counsel, or when the conference officer has directed a party to attend...

ETHICAL PROVISIONS

Code of Judicial Conduct for the District of Columbia Courts – Canon 3:

"A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently"

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

...

(5) A judge shall perform judicial duties without bias or prejudice...

...

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

...

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the

judge an to refrain from manifesting bias and prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

...

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the District of Columbia Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or

permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judges to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the

parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

American Bar Association – Model Code of Judicial Conduct – Canon 3:

"A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently"

C. Administrative Responsibilities.

...

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

...

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of his Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules

of lawyer conduct have a different title] that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Code of Conduct for United States Judges–Canon 3:

"A Judge Should Perform the Duties of the Office Impartially and Diligently"

...

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

...

(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

...

(5) A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

DISTRICT OF COLUMBIA COURT OF APPEALS
Nos. 04-CM-760 & 04-CO-1600

ELENA R. SASSOWER, APPELLANT,

v.

UNITED STATES, APPELLEE.

Appeals from the Superior Court of the District of Columbia, Criminal Division M-4113-03

(Hon. Brian Holeman, Trial Judge)

Submitted October 17, 2006
Decided December 20, 2006)

Before: RUIZ and KRAMER, *Associate Judges*, and NEBEKER, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Following a jury trial, appellant Elena R. Sassower was convicted on April 20, 2004 of one count of disrupting Congress[1] and was sentenced on June 28, 2004 to a term of six months incarceration. Appellant filed a timely notice of appeal on June 29, 2004 and now alleges four grounds upon which her conviction should be overturned: (1) the trial court erred in denying her motion for recusal based on bias; (2) the trial court erred in holding that she was not entitled to have her case removed to the United States District Court for the District of Columbia; (3) this Court should hold in the first instance that D.C. Code §10.503.15(b)(4) is unconstitutional both as written and as applied to her

---

[1] D.C. Code §10-503.16(b)(4) (2001).

case; and (4) the trial court erred in denying her motion under D.C. Code §23-110, which challenged her sentence as illegal and unconstitutional. We affirm.

On May 22, 2003 appellant attended a confirmation hearing of a judicial nominee for the United States Court of Appeals for the Second Circuit, which was being held by the Senate Judiciary Committee in the Dirksen Senate Office Building, located in the United States Capitol. Two days prior to the hearing, appellant began making repeated efforts to contact Senator Hillary Rodham Clinton about this particular judicial nominee. After conversations with appellant, members of Senator Clinton's staff alerted the Capitol Police, who spoke with appellant and became concerned that she might disrupt the confirmation hearing. At the confirmation hearing, as Senator Chambliss, the acting Chairman of the Committee began to wrap up the hearing, appellant stood up and shouted over the voice of the Senator that he should look into the corruption on the New York Court of Appeals. The Senator banged his gavel and asked the Capitol Police to restore order, and as the [p. 2] Capitol Police approached appellant and escorted her out of the room she continued to shout her views and insist that she wanted to testify. She was subsequently charged with one count of disruption of Congress.

Prior to trial, appellant made a motion for a change of venue, which was denied. At trial, she represented herself and made two motions to disqualify the trial judge based on grounds of bias. The motions were denied, and after a relatively lengthy trial, a jury convicted her of misdemeanor disruption of Congress. At sentencing, the trial judge offered a sentence that included probation; however, appellant declined to accept the terms of probation, and the trial judge, therefore sentenced her to six months incarceration. Appellant subsequently filed a motion under D.C. Code §23-110 attacking the legality and constitutionality of her sentence, which the trial judge denied. Sassower

appealed its denial, and we consolidated that appeal with her appeal of the underlying conviction.

I

We review the denial of a motion to disqualify a trial judge on grounds of alleged bias for abuse of discretion. *Anderson v. United States*, 754 A.2d 920, 923 (D.C. 2000). Under Super. Ct. Civ. R. 63-I, made applicable to criminal cases through Super. Ct. Crim. R. 57(a), motions for disqualification must include an affidavit that states the facts and reasons for the belief that bias exists, which must be accompanied by a certificate stating that the allegations are made in good faith. Furthermore, because of the disruptiveness of disqualification, affidavits under Rule 63-I are strictly scrutinized for form, timeliness, and sufficiency. *York v. United States*, 785 A.2d 651, 654 (D.C. 2001), quoting *In re Evans*, 411 A.2d 984, 994 (D.C. 1980).

Appellant's motion for disqualification was wholly lacking in merit, as her allegations focused almost exclusively on unfavorable rulings made by the trial judge. "The bias or prejudice must be personal in nature and have its source 'beyond the four corners of the courtroom.'" *Gregory v. United States*, 393 A.2d 132, 142 (D.C. 1978), quoting *Tynan v. United States*, 126 U.S. App. D.C. 206, 210, 376 F.2d 761, 765, cert. denied, 389 U.S. 845 (1967)). We note that the Supreme Court decision in *Liteky v. United States*, 510 U.S. 540 (1994), upon which appellant relies, does not necessarily apply to claims made specifically under Super. Ct. Civ. R. 63-I.

The Court in *Liteky* was interpreting 28 U.S.C. §455 (a), the statute that governs recusal of federal judges, and in that context concluded that judicial bias sufficient to demand recusal need not arise only from an "extrajudicial source." *Id.* at 554-55. In other words, the Court found it possible that an "unfavorable predisposition can also deserve to be characterized as 'bias' or 'prejudice' because, even though it springs from

the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment." *Id.* At 551. Super. Ct. Civ. R. 63-I, however, contains additional language that requires the bias to be "personal," thus it is not clear that the extrajudicial source reasoning from *Liteky* would apply to judicial recusal in D.C. Superior Court. However, we need not reach that question since appellant's allegations were insufficient to warrant disqualification even viewing this claim under the standard set in *Liteky*. "[J]udicial rulings [p. 3] alone almost never constitute a valid basis for a bias or partiality motion." *Id.* at 455. "'[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias of partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.'" *In re Banks*, 805 A.2d 990, 1003 (D.C. 2002) (quoting *Liteky*, *supra*, 510 U.S. at 550). No such showing was made in this case, and none of the evidence suggested by appellant provides us with any reason to question the impartiality of the trial judge. As such, the trial court did not abuse its discretion in denying appellant's motions for disqualification.

II

Appellant states that she was "entitled" to have her case removed to the United States District Court for the District of Columbia. This argument is meritless because it not only invites this court to review the executive branch's exercise of prosecutorial authority where we have no power to do so, but D.C. Code §10-503.18 conveys no right upon a criminal defendant to choose the court in which her case will be brought.[2]

---

[2] D.C. Code § 10-503.18(c) provides that "[p]rosecution for any violation of § 10.503.16 (a) or for conduct which constitutes a felony...shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of this part may be in the Superior Court of the District of Columbia." It is clear that a misdemeanor violation of

Furthermore, the decision to remove a criminal prosecution to federal district court rests with the district court, and even if appellant had followed the requisite procedures to request removal to federal court,[3] this court lacks authority to review that decision.

III

Nowhere in the copious proceedings at the trial court did appellant challenge the constitutionality of D.C. Code § 10-503.16 (b)(4) or its application to her situation. As such, we need not entertain this claim now. *See Washington v. United States*, 884 A.2d 1080, 1098-99 (D.C. 2005) (stating that constitutional challenges not raised before the trial court are rejected as waived) (citing *Hager v. United States*, 856 A.2d 1143, 1151 (D.C. 2004); *Mitchell v. United States*, 746 A.2d 877, 885 n.11 (D.C. 2000)). Moreover, it is patently clear that this statute is constitutional on its face. Indeed, this court has already held as much. *See Armfield v. United States*, 811 A.2d 792, 796 (D.C. 2002) (stating that D.C. Code § 9-112 (b)(4) (1981 ed.) [recodified as D.C. Code § 10-503.16 (b)(4) (2001 ed.)] is "constitutional as written"); *Smith-Caronia v. United States*, 714 A2d [p. 4] 764, 766 (D.C. 1998) (holding that the statute "comfortably meets" the standards for constitutionality because it is "viewpoint neutral on its face and imposes reasonable time, place, and manner restrictions on speech consistent with the significant government interest it serves, while leaving open ample means of communication not calculated to disrupt the orderly conduct of the legislature's business").

Appellant's suggestion that the statute was unconstitutionally applied because of the difference

---

§10.503.16 (b) may be prosecuted in either United States. District Court or District of Columbia Superior Court. The prosecutor was therefore acting within his lawful discretion in choosing to bring this case in District of Columbia Superior Court.

[3] See 28 U.S.C. § 1446(c) (2006).

between a committee hearing and a session of Congress does not create a viable distinction, as the statute clearly applies to "any hearing...before any committee...of the Congress." D.C. Code § 10-503.16 (b)(4) (2001). Appellant's final argument that the statute was unconstitutionally applied rests on factual assertions that were properly presented to the jury, which was "entitled to disregard what [s]he said in the courtroom and base its verdict on what [s]he actually did." *Armfield, supra*, 811 A.2d at 798. We, therefore, find no plain error in the actions of the trial court. *See Shepherd v. United States*, 905 A.2d 260, 262 (D.C. 2006) (stating that where constitutional argument was not raised before the trial court, discretionary review was limited to plain error).

IV

Appellant has completed serving her six-month sentence, thus her sentencing claims are now moot. *See McClain v. United States*, 601 A.2d 80, 81 (D.C. 1992); *Holley v. United States*, 442 A.2d 106, 107 (D.C. 1981) (stating that a claim is moot where there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged decision) (citations omitted). Accordingly, it is

ORDERED and ADJUDGED that the decision be, and hereby is, affirmed.

ENTERED BY DIRECTION OF THE COURT:

s/

GARLAND PINKSTON, JR.
Clerk of the Court

Copies to:

Hon. Brian Holeman

Clerk, Superior Court

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DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 04-CM-760 & 04-CO-1600
Filed March 20, 2007

ELENA R. SASSOWER,

Appellant,

v.

M-4113-03

UNITED STATES,

Appellee.

BEFORE: Washington, Chief Judge; Farrell, *Ruiz, Reid, Glickman, *Kramer, **Fisher, Blackburne-Rigsby, and Thompson, Associated Judges; *Nebeker, Senior Judge.

O R D E R

On consideration of appellant's *pro se* petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

** Associate Judge Fisher has recused himself from these cases.

Copies to:

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Clerk, Superior Court

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Assistant United States Attorney

[Appellant's Appendix: 407]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

Criminal No. M-4113-03
Misdemeanor Calendar I

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant

ORDER

This matter comes before the Court as Defendant's Motion to Disqualify Judge Brian F. Holeman, contained within Defendant's Notice of Motion to Disqualify Judge Brian F. Holeman & for Postponement/Continuance of the March 1, 2004 Trial Date Pending Responsive, Written Adjudication of Defendant's Still-Outstanding October 30, 2003 Motion to Enforce her Discovery Rights, the Prosecution's Disclosure Obligations, and for Sanctions, and Affidavit in support thereof, filed on February 24, 2004.

Upon consideration of Defendant's Motion to Disqualify Judge Brian F. Holeman, Defendant having established no facts that the trial judge's impartiality might reasonably be questioned, it is this 25th day of February, 2004 hereby

ORDERED, that the Defendant's Motion to Disqualify Judge Brian F. Holeman is **DENIED**.

s/
BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS
COPIES MAILED FROM CHAMBERS ON 2-26-04

Copies forwarded by facsimile and mailed to:

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[Appellant's Appendix: 409]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

Criminal No. M-4113-03
Misdemeanor Calendar I

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant

ORDER

This matter comes before the Court as Defendant's Motion for a Continuance of the March 1, 2004 Trial Date, contained within Defendant's Notice of Motion to Disqualify Judge Brian F. Holeman & for Postponement/Continuance of the March 1, 2004 Trial Date Pending Responsive, Written Adjudication of Defendant's Still-Outstanding October 30, 2003 Motion to Enforce her Discovery Rights, the Prosecution's Disclosure Obligations, and for Sanctions, and in the Affidavit in support thereof, filed February 24, 2004.

Upon consideration of Defendant's Motion, and any opposition thereto, Defendant having failed to establish that a continuance of the trial date is necessary to prevent manifest injustice, it is this 25th day of February, 2004 hereby

ORDERED, that the Defendant's Motion is **DENIED**.

s/
BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS
COPIES MAILED FROM CHAMBERS ON 2-26-04

Copies forwarded by facsimile and mailed to:

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[Appellant's Appendix: 411]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

Criminal No. M-4113-03
Misdemeanor Calendar I

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant

ORDER

This matter comes before the Court as Defendant's repeat request for change of venue, contained within Defendant's Notice of Motion to Disqualify Judge Brian F. Holeman & for Postponement/Continuance of the March 1, 2004 Trial Date Pending Responsive, Written Adjudication of Defendant's Still-Outstanding October 30, 2003 Motion to Enforce her Discovery Rights, the Prosecution's Disclosure Obligations, and for Sanctions, filed February 24, 2004.

The record of this case reflects that Defendant previously filed a Motion for Change of Venue on August 22, 2003. On September 4, 2003, Judge Abrecht denied this Motion in Memorandum Explaining Denial of Motion for Change of Venue, which establishes the law of this case as to venue.

Accordingly, upon consideration of Defendant's instant Motion, and any opposition thereto, there being no demonstration of newly presented facts or a change in substantive law, it is this 25th day of February, 2004 hereby

ORDERED, that the Defendant's request for change of venue is **DENIED**.

_____s/_____
BRIAN F. HOLEMAN
JUDGE

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COPIES MAILED FROM CHAMBERS ON 2-26-04

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[Appellant's Appendix: 466-467]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

Criminal No. M-4113-03
Judge Holeman
Misdemeanor Calendar I

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant

ORDER

This matter comes before the Court as Defendant's Motion for Removal of this case to the United States District Court for the District of Columbia, contained within Defendant's Notice of Motion to Vacate Orders of Judge Brian F. Holeman for Violation of D.C. Superior Court Civil Procedure Rule 63-I Pertaining to "Bias or Prejudice" & for Removal/Transfer of this Case to the U.S. District Court for the District of Columbia pursuant to D.C. Code §10-503.18, filed March 22, 2004. Should this instant Motion be denied, Defendant has further requested a stay of the trial pending appeal of said ruling.

The record of this case reflects that Defendant previously filed a Motion for Change of Venue on August 22, 2003. On September 4, 2003, Judge Abrecht denied this Motion in Memorandum Explaining Denial of Motion for Change of Venue. Defendant filed another Motion for Change of Venue before this Court on February 24, 2004. On February 25, 2004, Defendant's Motion for Change of Venue was again denied. Defendant now seeks removal of this case to the United States District Court for the District of Columbia pursuant to D.C. Code Ann. §10-503.18 (2004).

Accordingly, upon consideration of Defendant's Motion, and the Government's Opposition thereto, there being no demonstration of newly presented facts or a change in substantive law, nor citation of any legal authority supportive of the requested relief, it is this 29th day of March, 2004 hereby

ORDERED, that the Defendant's Motion to Removal is **DENIED**; and it is further

ORDERED, that Defendant's request for a stay of the trial date pending appeal of this ruling is **DENIED**.

s/
BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS
COPIES MAILED FROM CHAMBERS ON 3-30-04

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[Appellant's Appendix: 468-471]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

Criminal No. M-4113-03
Judge Holeman
Misdemeanor Calendar I

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant

ORDER

This matter comes before the Court as Defendant's repeat Motion for the Disqualification of Judge Brian F. Holeman and related Motion to Vacate Orders, contained within Defendant's Notice of Motion to Vacate Orders of Judge Brian F. Holeman for Violation of D.C. Superior Court Civil Procedure Rule 63-I Pertaining to "Bias or Prejudice" & for Removal/Transfer of this Case to the U.S. District Court for the District of Columbia pursuant to D.C. Code §10-503.18, filed March 22, 2004. Should the instant Motion be denied, Defendant has further requested a stay of the trial pending appeal of said ruling.

The record of this case reflects that Defendant previously filed a Motion for Disqualification pursuant to Canon 3E of the American Bar Association Code of Judicial Conduct on February 24, 2004. The Court denied this Motion by written Order on February 25, 2004. Defendant now seeks disqualification of this Court pursuant to Rule 63-I of the D.C. Superior Court Rules of Civil Procedure (2004), made applicable to criminal cases by Rule 57(a) of the D.C. Superior Court Rules of Criminal Procedure (2004).

Rule 63-I of the D.C. Superior Court Rules of Civil Procedure governs disqualification of a trial judge for bias or prejudice. It requires that the alleged bias or prejudice against a party be personal, rather than judicial, and have originated from sources *outside of court proceedings* in either the pending case or prior cases. *Baylor v. United States*, 360 A.2d 42, 44 (D.C. App. 1976), *cert denied*, 429 U.S. 1024 (1976). *See also In re Bell*, 373 A.2d 232, 233 (D.C. App. [p. 2] 1977); *In re Thompson*, 419 A.2d 993, 995 (D.C. App. 1980). The certification of the movant's allegations is established by submission of a sufficient affidavit and certificate of counsel of record.

Subsection (b) of Rule 63-I sets forth the procedural requirements for the affidavit and certificate of counsel of record. It states:

> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for failure to file by such time.

Here, Defendant's affidavit is not accompanied by a certificate of counsel of record, Defendant *pro se*, stating that the affidavit is made in good faith. This fact alone indicates that Defendant's instant Motion is, on its face, procedurally deficient. *York v. United States*, 785 A.2d 651, 653-54 (D.C. App. 2001). Further, the affidavit is insufficient in that it fails to state with particularity material facts that, if true, would convince a fair and reasonable mind that bias exists. *In re Evans*, 411 A.2d 984, 994 (D.C. App. 1980) (citing *In re Bell*, 373 A.2d at 234). Indeed, the facts as stated must be strong enough to overcome the presumption in favor of a trial judge's impartiality. *In re Evans*, 411 A.2d at 996.

Defendant bases her request for disqualification on grounds that the Orders of this Trial Judge denying Defendant's Motion for Disqualification, Defendant's Motion for a Continuance of the Trial Date and Defendant's Motion for Change of Venue were all based on "conclusory claims," and that the Order granting the Government's Motion *In Limine* did not state reasons therefore. While Defendant's meaning of the term "conclusory claims" in the context of the instant Motion is unclear, further clarity is unnecessary to disposition of the pending question. None of the grounds asserted by Defendant even remotely assert prejudice from an extrajudicial source. Rather, they simply reflect Defendant's dissatisfaction with this Court's Orders. [p. 3] Plaintiff has previously demonstrated such dissatisfaction, and this Court reiterates that prior adverse rulings do not reflect bias nor justify recusal. *See, e.g.*, Eilperin Memorandum Order (September 3, 2003); *In re Evans*, 411 A.2d at 996 (citing *Barkan v. United States*, 362 F.2d 158 (7th Cir.), *cert. denied*, 385 U.S. 882 (1966) (prior adverse rulings do not reflect bias)); *see also In re Bell*, 373 A.2d at 234; *Baylor v. United States*, 340 A.2d at 44; *In re Thompson*, 419 A.2d at 995.

This Trial Judge became aware of Defendant's existence solely consequent to the assignment of the instant case (Criminal No.: M-4113-03) and Defendant has failed to establish any facts to support the required showing that the Court's alleged bias stems from a source outside the scope of official judicial conduct in the instant or a prior case. *In re Evans*, 411 A.2d at 995, *see also In re Thompson*, 419 A.2d at 995.

Accordingly, upon consideration of Defendant's repeat Motion to Disqualify and related Motion to Vacate Orders, and the Government's Opposition thereto, Defendant having failed to establish that the alleged bias and prejudice stems from an extrajudicial source unrelated to those made known to this Court through

participation in the instant or a prior case and having further failed to cite any legal authority for the requested relief, it is this 6th day of April, 2004 hereby

ORDERED, that Defendant's Motion to Disqualify Judge Brian F. Holeman and related Motion to Vacate Orders are **DENIED**; and it is further

ORDERED, that Defendant's request for a stay of the trial date pending appeal of this ruling is **DENIED**.

_____s/_____
BRIAN F. HOLEMAN
Judge

SIGNED IN CHAMBERS
COPIES MAILED FROM CHAMBERS ON 4-7-04

[p. 4] Copies forwarded by facsimile and mailed to:

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DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-OA-17 **Filed: April 8, 2004**

ELENA RUTH SASSOWER,

Petitioner,

v. M4113-03

HON. BRIAN F. HOLEMAN, *et al.*,

Respondents.

BEFORE: Farrell and Glickman, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of the petition for writ of mandamus, certiorari and certification, the attachments thereto, and petitioner's motion for stay and disqualification, it is

ORDERED that the petition for writ of mandamus, certiorari and certification is denied. The petitioner has failed to show a clear and indisputable right to issuance of the writ of mandamus. *See Banov v. Kennedy*, 694 A.2d 850, 857 (D.C. 1996). Petitions for a writ of certiorari seek to invoke an appellate court's discretionary review and are not issued by this court since its jurisdiction is established by statute. D.C. Code § 11-721 (2001). Nor is a writ of certification justified since the issues in question involve D.C. law and cannot be answered by the highest court of another state. D.C. Code § 11-723 (2001). It is,

FURTHER ORDERED that petitioner's motion for stay and disqualification is denied. Petitioner has failed to meet the standard necessary to justify a stay, *see Barry*

v. Washington Post Co., 529 A2d 319 (D.C. 1987), nor shown an adequate basis for her alternative request that we disregard that standard. Similarly, the requested disqualification of all members of this court is not only impractical, it has, as discussed in the Superior Court's August 2003 memorandum explaining its denial of petitioner's motion for change of venue, no basis in fact. The petitioner has failed to identify any support for her blanket assertion that the courts and judges of this jurisdiction cannot be impartial in cases, such as her's, which involve the United States Congress.

PER CURIAM

Copies to:

Hon. Brian F. Holeman

Ms. Elena Ruth Sassower
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John R. Fisher, Esq.
Assistant United States Attorney

eve

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 **Filed: July 7, 2004**

ELENA R. SASSOWER,

Appellant,

v. M4113-03

UNITED STATES,

Appellee.

BEFORE: Steadman and Reid, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of appellant's motion to proceed on appeal *in forma pauperis* and it appearing that the affidavit is incomplete, appellant's motion and supplement brief for stay and release pending appeal and the opposition thereto, it is

ORDERED that appellant's motion to proceed *in forma pauperis* is denied. Appellant shall, within 15 days of the date of this order either submit the $ 100 appeal fee or a completed and accurate motion and affidavit executed personally by appellant, to proceed on appeal *in forma pauperis*. Failure to comply with this order will subject this appeal to dismissal. It is

FURTHER ORDERED that appellant's motion for stay and release pending appeal is denied. It is

FURTHER ORDERED that counsel for appellant shall, within 15 days from the date of this order, file the statement regarding transcript.

PER CURIAM

Copies to:

Honorable Brian Holeman

Clerk, Superior Court

Mark Goldstone, Esq.
9419 Spruce Tree Circle
Bethesda, MD 20814

John R. Fisher, Esquire
Assistant United States Attorney

DISTRICT OF COLUMBIA
COURT OF APPEALS

No.04-CM-760 **Filed: July 29, 2004**

ELENA R. SASSOWER,
Appellant

v. M4113-03

UNITED STATES,
Appellee.

BEFORE: Terry and Steadman, Associate Judges, and King, Senior Judge.

O R D E R

On consideration of the joint motion of counsel and appellant to allow counsel to withdraw and appellant to proceed *pro se* and on further consideration of this court's July 7, 2004, order that denied appellant's motion to proceed on appeal *in forma pauperis* and directed appellant to either file the $100 appeal fee or a complete motion and affidavit within 15 days or her appeal would be dismissed and it appearing that the court has not received either a motion or verification that the fee has been paid, it is

ORDERED that the joint motion is granted and the appearance of Mark L. Goldstone, Esquire is hereby vacated and appellant shall proceed on appeal *pro se*. It is

FURTHER ORDERED that appellant is hereby directed that she must comply with the rules of this court and may interact with this court only through properly filed pleadings that conform with the rules of this court and are properly served on the appropriate United States Attorney listed on this order. Requests made by telephone, whether made by appellant or persons on

behalf of appellant, will not be entertained. It is

FURTHER ORDERED that appellant shall, within 20 days of this order, file verification that she has paid the appropriate appeal fee and made a deposit for any necessary transcript. Failure to comply with this order shall result in the dismissal of this appeal without further notice.

PER CURIAM

Copies to:

Clerk, Superior Court

Court Reporting Division

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Elena R. Sassower
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Assistant U.S. Attorney

jb

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 **Filed: September 16, 2004**

ELENA RUTH SASSOWER,
Appellant,
v. M4113-03

UNITED STATES,
Appellee.

BEFORE: Terry and Reid, Associate Judges,
and Newman, Senior Judge.

O R D E R

On consideration of appellant's motion for reargument, reconsideration, renewal and other relief, the affidavit in support thereof, appellee's opposition, appellant's reply and supporting affidavit, appellant's motion for procedural order, interim relief, and clarification, and appellee's letter to the Clerk of this court clarifying certain assertions made in its opposition, it is

ORDERED that appellant's request to exceed page limitations made within the context of her other filings is granted and the Clerk shall file the appellant's motions and reply. It is

FURTHER ORDERED that appellant's motion for reconsideration is denied. Appellant continues to reply upon the arguments made in her petition for writ of mandamus, no. 04-OA-17. However, this court has considered and rejected those arguments on two occasions; first, in its order denying mandamus relief, and second, in its order denying appellant's motion for release pending appeal. On this third iteration they remain, insufficient and unpersuasive. It is

FURTHER ORDERED that appellant's motion for procedural order, interim relief, and clarification is denied.

PER CURIAM

Copies to:

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Assistant United States Attorney

dpt

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 **Filed: September 23, 2004**

ELENA RUTH SASSOWER,
Appellant,

v. M4113-03

UNITED STATES,
Appellee.

BEFORE: Terry, Farrell, and Reid, Associate Judges.

O R D E R

On consideration of appellant's unopposed emergency motion for release to preclude mootness of a newly raised issue regarding the legality of her sentence, it is

ORDERED that appellant's motion is denied without prejudice to refiling in the Superior Court. *See* Super. Ct. Crim. R. 35.

PER CURIAM

Copies to:

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Clerk, Superior Court
Criminal Division

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[Appellant's Appendix: 1738]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

Criminal No. M-4113-03
Judge Brian Holeman
Misdemeanor Calendar I

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant

ORDER

Upon consideration of Defendant's Unopposed Emergency Motion for Defendant's Release to Preclude Mootness of Appellate Issue, it is this 24th day of September, 2004 hereby

ORDERED, that the Defendant's Motion is **DENIED**.

_____s/_____
BRIAN F. HOLEMAN
JUDGE

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DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-C0-1239 **Filed: October 14, 2004**

ELENA R. SASSOWER,

Appellant,

v. M4113-03

UNITED STATES,

Appellee.

BEFORE: Washington and Glickman, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of appellant's "emergency appeal from the Superior Court" which we construe as a D.C. App. R.9 (b) motion for release, appellee's response, and appellant's reply thereto, it is

ORDERED that appellant's motion for release is denied. Appellant has failed to show reversible error under D.C. Code § 23-1325 (c) (2001). It is

FURTHER ORDERED, *sua sponte*, that this appeal is hereby dismissed as being unnecessarily duplicative of appeal no. 04-CM-760.

PER CURIAM

Copies to:

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DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-C0-1239 **Filed: October 14, 2004**

ELENA R. SASSOWER,

Appellant,

v. M4113-03

UNITED STATES,

Appellee.

BEFORE: Glickman and Washington, Associate Judges, and Nebeker, Senior Judge.

AMENDED ORDER

On consideration of appellant's "emergency appeal from the Superior Court" which we construe as a D.C. App. R.9 (b) motion for release, appellee's response, and appellant's reply thereto, it is

ORDERED that appellant's motion for release is denied. Appellant has failed to show reversible error under D.C. Code § 23-1325(c) (2001). It is

FURTHER ORDERED, *sua sponte*, that this appeal is hereby dismissed as being unnecessarily duplicative of appeal no. 04-CM-760.

PER CURIAM

Copies to:

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dpt

[Appellant's Appendix: 10-15]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

Criminal No. M-4113-03
Judge Brian Holeman
Misdemeanor Calendar I

UNITED STATES OF AMERICA

v.

ELENA RUTH SASSOWER,

Defendant

ORDER

This matter comes before the Court as Defendant's Motion pursuant to C.C.R.Crim.P.35(a) and D.C. Code §23-110(a) to Correct an Illegal Sentence, filed October 26, 2004. Defendant has also requested a hearing on the Motion.

The record of this case reflects that Defendant was sentenced on June 28, 2004. Defendant previously filed an Unopposed Motion for Release to Preclude Mootness of Appellate Issue on September 23, 2004, which was denied by Order dated September 24, 2004. Defendant filed an "Emergency Appeal from the Superior Court" on October 6, 2004, which was denied on October 14, 2004. For the reasons that follow, the Court finds Defendant's current Motion devoid of merit and denies Defendant's requests for relief and for a hearing.

D.C. Superior Court Rules, Criminal Rule 35(a) governs correction or reduction of sentence. The Court may correct an illegal sentence at any time. In her Motion, Defendant acknowledges that under D.C. Code §10-503.18(b), the maximum penalty for disruption of Congress is six months incarceration and a $500 fine. Thus, Defendant concedes that the sentence imposed is within the limits authorized by the pertinent statute.

(Defendant's Motion at 3.) In addition, there can be no viable challenge to this [p. 2] Court's jurisdiction to impose that sentence. Thus, there is no *prima facie* showing that the sentence imposed was illegal within the application of Rule 35(a). See *Robinson v. United States*, 454 A.2d 810, 813 (D.C. App. 1982).

Rule 35(a) also provides that a sentence imposed in an illegal manner may be corrected within **120 days** after sentence is imposed. This 120-day period is a jurisdictional limit on the power of the Court *to act*, and may not be extended. *United States v. Nunzio*, 430 A.2d 1372 (D.C. App. 1981). Here, Defendant was sentenced on June 28, 2004, or **110 days** prior to filing the instant motion on October 26, 2004. Government filed Opposition to the Motion on November 9, 2004, which rendered the matter ripe for ruling **124 days** after sentencing. The Court could not act within the required time period, thereby losing its jurisdiction to correct the sentence allegedly imposed in an illegal manner. Thus, the Motion must be denied on procedural grounds alone. There is no cognizable basis supportive of a grant of the relief Defendant requests under Rule 35(a).

Defendant also seeks correction of the sentence pursuant to D.C. Code §23-110(a), which governs remedies for a motion attacking sentence. Under Section 23-110(a), Defendant is entitled to relief where (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the Court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, or (4) the sentence is otherwise subject to collateral attack. Defendant fails to make the required showing that either of these conditions have been satisfied.

Defendant's claims that the imposed sentence is in violation of the Constitution or District of Columbia law are mere conclusory allegations, the authority cited

inapposite [p. 3] and non-controlling, and the argument confusing. Defendant's Motion is, in substantial part, a critique of the *proposed conditions* of probation presented to Defendant prior to the imposition of sentence. It is well-established that the trial court has broad discretion to formulate an appropriate sentence, including setting the conditions of probation. *Hill v. United States*, 529 A.2d 788, 790 (D.C. App. 1987). The proposed conditions of probation presented to Defendant on June 28, 2004, the apparent foundation of Defendant's contention that her constitutional rights have been violated, were rejected by Defendant. Clearly, Section 23-110 does not pertain to *proposed* probationary conditions *rejected* by Defendant *prior to* imposition of sentence.

Further, the Court did not exceed its jurisdiction in imposing the sentence, nor did sentence as ultimately imposed exceed the maximum authorized by law. Defendant has not, and cannot, present facts or authority to the contrary.

Still further, to the extent that Defendant seeks to classify the instant Motion as a collateral attack, the matter is time-barred and this Court is without jurisdiction to act, *Robinson*, 454 A.2d at 813 (D.C. App. 1982. The sentencing at issue here neither involves action beyond the sentencing judge's jurisdiction nor a sentence in excess of the statutory maximum. Therefore, any collateral attack of alleged sentencing error may be predicated only upon a contention that Defendant's sentence was imposed in an "illegal manner." *Id.* Such collateral challenges, though authorized by Section 23-110, are limited by the 120-day jurisdictional limitation of Rule 35(a). *Id.* Here, again, the Court is without jurisdiction to act as the time period has expired and may not be extended.

Thus, Defendant has failed to establish that the delineated requirements of Section 23-110(a) have been met. It should also be noted that Section 23-110(e)

expressly [p. 4] prohibits consideration of a second or successive motion for similar relief on behalf of the same prisoner. Within her Motion, Defendant admits to having filed "numerous pro se motions in both this Court and the Court of Appeals, all of which have been denied." (Defendant's Motion at 4-5). Indeed, documents have been filed by Defendant challenging the sentence imposed: Defendant's Unopposed Emerg ncy Motion for Defendant's Release to Preclude Mootness of Appellate Issue, filed on September 24, 2004 and Appellant['s] Unopposed Emergency Motion for Defendant's Release to Preclude Mootness of Newly Raised Issue Regarding Illegality of her Sentence, filed on September 23, 2004. Both motions were denied. The current Motion is nothing more than a reiteration of issues raised in those documents.

The question remains whether Defendant should be afforded a hearing on this Motion. Section 23-110(a) claims that are conclusory and palpably incredible do not require hearings. *Haley v. United States*, 799 A.2d 1201, 1214 (D.C. App. 2002). Here, Defendant's constitutional claims are not only conclusory, they are palpably incredible. Defendant's current argument that she was sentenced twice is inconsistent with the record. On June 28, 2004 Defendant was offered probation, Defendant rejected probation, and only following Defendant's clear and unequivocal rejection of probation was sentence imposed. That sentence, once imposed, did not exceed the maximum provided under D.C. Code §10-503(16). Defendant argues that the rejected proposal of probation is a *first* sentence and the imposition of 6 months incarceration is a *second* sentence, and therefore illegal. This argument is clearly incredible because a proposal of probation is not a sentence under any reading of authority. The sentencing judge is empowered to offer a defendant sentencing alternatives from which the defendant may [p. 5] choose. *Hill v. United States*, 529 A.2d at 790. Here, Defendant chose not to abide the proposed conditions of probation and was thereafter

sentenced. Defendant's claims do not merit a hearing.

Further, a hearing is not required where the hearing would not add to the available information on the question whether the Court's sentence was improper. *Ready v. United States*, 620 A.2d 233 (D.C. App. 1993). On its face the Motion fails and where, as here, the existing record provides an adequate basis for denying the Motion, no hearing is required.

WHEREFORE, upon consideration of Defendant's Motion, Government's Opposition thereto, and the record of this case, Defendant having failed to establish that the imposed sentence was illegal or that the Court otherwise retains jurisdiction to entertain her Motion, and having further failed to establish that the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, the Court was without jurisdiction to impose the sentence, the sentence was in excess of the maximum authorized by law, or the sentence is otherwise subject to collateral attack, and having further failed to state a cognizable basis for relief other than as previously submitted to the Court, it is this 22nd day of November, 2004 hereby

ORDERED, that the Defendant's Motion and request for a hearing are **DENIED**.

_____s/_____
BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS
COPIES MAILED FROM CHAMBERS 11-23-04

[p. 6] Copies forwarded by facsimile and mailed to:

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DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 & 04-CO-1600 **Filed: July 14, 2005**

ELENA RUTH SASSOWER,

Appellant,

v. M4113-03

UNITED STATES,

Appellee.

BEFORE: Reid and Glickman, Associate Judges, and Pryor, Senior Judge.

O R D E R

On consideration of appellant's lodged brief and "supplemental fact statement," and appellant's miscellaneous motion which seeks: 1) leave to exceed the page limits for her lodged brief; 2) a 90 day extension with directions on how to address a given legal standard in the event the motion to exceed is denied; 3) to supplement the record with materials from an appeal dismissed as duplicative, materials from a previously filed petition for mandamus relief, and materials which the trial court refused to admit below, it is

ORDERED that appellant's motion to exceed the page limits is denied and the Clerk shall strike appellant's lodged brief and improper "supplemental fact statement." It is

FURTHER ORDERED that appellant's motion for 90 day extension and advisory opinion is denied. It is

FURTHER ORDERED that appellant's motion to supplement is denied. It is

FURTHER ORDERED that appellant shall submit a brief which conforms to the rules of this court within 30 days from the date of this order. *See* D.C. App. R. 32. It is

FURTHER ORDERED that appellee shall file its brief within 30 days thereafter and appellant her reply, if any, within 21 days after the filing of appellee's brief.

PER CURIAM

Copies to:

Ms. Elena R. Sassower
16 Lake Street, Apt. 2C
White Plains, NY 10603

John R. Fisher, Esquire
Assistant United States Attorney

dpt

DISTRICT OF COLUMBIA
COURT OF APPEALS

04-CM-760 & 04-CO-1600 **Filed: August 5, 2005**

ELENA RUTH SASSOWER,

Appellant,

v. M4113-03

UNITED STATES,

Appellee.

BEFORE: Reid and Glickman, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of the appellant's motion for reconsideration and other relief, appellant's renewed motion to exceed page limits or for an extension of time, and appellant's letter of August 3, 2005 – enclosing a petition for initial hearing en banc, which will be separately presented to the full court for its consideration, as well as what purports to be a "final superseding" motion for reconsideration and other relief – which we construe as a motion for leave to file an amended motion to reconsider and for other relief, it is

ORDERED that appellant's motion for leave to file is granted and the Clerk shall file the lodged amended motion for reconsideration and other relief. It is

FURTHER ORDERED that appellant's motion and amended motion for reconsideration and other relief are denied. See D.C. App. R. 10 (a) (record on appeal consists of the original papers and exhibits filed in the Superior Court, any transcript, and a certified copy of the docket entries prepared by the Clerk of the Superior Court); *Gomez v. Gomez*, 341 A.2d 423 (D.C. 1975) (appellate court may not consider material which was not

part of the record below); *Bell v. United States*, 806 A.2d 228 (D.C. 2002) (trial court judgment is presumed valid and a losing party who notes an appeal bears the burden of persuading the appellate court that the trial court erred); *District of Columbia v. WICAL Ltd. P'ship*, 630 A.2d 174 (D.C. 1993) (the court does not issue advisory opinions); *Litkey v. United States*, 510 U.S. 540 (1994) (judicial rulings alone do not constitute bias requiring recusal); D.C. App. R. 14 (a) (settlement conferences are only appropriate in non-criminal appeals). It is

FURTHER ORDERED that appellant's renewed motion to exceed page limits or for extension of time is granted only to the extent that appellant shall submit a brief which conforms to the rules of this court within 90 days from the date of this order. Appellee shall file its brief within 30 days thereafter; and appellant her reply, if any, within 21 days after the filing of appellee's brief. *See* D.C. App. R. 32. It is

FURTHER ORDERED that the failure of appellant to comply with this order in a timely fashion will result in the dismissal of this appeal. *See* D.C. App. R. 38.

PER CURIAM

Copies to:

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16 Lake Street, Apt. 2C
White Plains, NY 10603

John R. Fisher, Esquire
Assistant United States Attorney dpt

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 & 04-CO-1600 Filed: October 5, 2005

ELENA R. SASSOWER,

Appellant,

v. M4113-03

UNITED STATES,

Appellee.

BEFORE: Washington, Chief Judge;
Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman, and Kramer, Associate Judges.

O R D E R

On consideration of appellant's *pro se* petition for initial hearing en banc; and it appearing that no judge in regular active service has requested that a vote be taken on the petition for initial hearing en banc, it is

ORDERED that appellant's *pro se* petition for initial hearing en banc is denied.

PER CURIAM

Copies to:

Honorable Brian Holeman

Clerk, Superior Court

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sl

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 & 04-CO-1600

Filed: October 27, 2005

ELENA R. SASSOWER,

Appellant,

v. M4114-03

UNITED STATES,

Appellee.

BEFORE: Reid and Glickman, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of the appellant's consent motion to exceed page limits, and appellant's renewed motion to vacate and for other relief, it is

ORDERED that appellant's consent motion is granted to the extent that the Clerk shall file the motion to vacate which exceeds the page limits set by the rules of this court. It is

FURTHER ORDERED that appellant's motion to vacate and for other relief is denied. The requests made in this notion have been presented numerous times without success and the appellant's insistence on raising them yet again constitutes an abuse of this court's processes. *See Corley v. United States*, 741 A.2d 1029, 1030-31 (D.C. 1999). Accordingly, it is

FURTHER ORDERED that the Clerk of the Court is directed to accept no further filings from the appellant except her conforming brief on the merits, due on November 7, 2005, and a conforming reply brief, if any, due within 21 days after the filing of appellee's brief on

the merits.

PER CURIAM

Copies to:

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Roy McLeese, Esquire
Assistant United States Attorney

dpt

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 & 04-CO-1600 Filed: March 15, 2006

ELENA R. SASSOWER,

Appellant,

v. M4113-03

UNITED STATES,

Appellee.

O R D E R

On further consideration of appellee's motion to release evidence, construed as a motion to supplement the record, and the opposition thereto, it is

ORDERED that appellee's motion is granted and the Clerk of the Superior Court shall prepare and transmit the videotape to this court as a supplemental record.

BY THE COURT:
s/
ERIC T. WASHINGTON
Chief Judge

Copies to:

Clerk, Superior Court

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DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-CM-760 **Filed: September 15, 2006**

ELENA R. SASSOWER,
Appellant,

v. CMD4113-03

UNITED STATES,
Appellee.

O R D E R

On consideration of the request of *pro se* appellant for oral argument, and it appearing that this matter is scheduled on the Summary Calendar of October 17, 2006, it is

ORDERED on behalf of the merits division assigned to consider this matter that the motion is denied. This matter will be submitted for consideration and decision on October 17, 2006, on the record and briefs filed without argument by any party.

FOR THE COURT:
s/
GARLAND PINKSTON, JR.
Clerk of the Court

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Suite 410
Spring Street, MD 20910

Roy W. McLeese III, Esquire
United States Attorney's Office

aj

[Appellant's Appendix: 102-140]

Petitioner's May 21, 2003 fax to U.S. Capitol Police

BY FAX: 202-224-0919 (39 pages)

DATE: May 21, 2003

TO: Capitol Police Detective Zimmerman
(Badge #2943)

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc.
(CJA)

RE: NOT BEING ARRESTED

Following up our lengthy phone conversations today, lasting approximately an hour (12:00-12:58 p.m.), including the time initially spent with Special Agent Lippay, enclosed is my letter of today's date to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy, transmitting my letter to Senator Schumer – and, additionally, my letter to Senator Clinton. These summarize many of the FACTS which I discussed with you and Special Agent Lippay. Please be advised that Special Agent did not call back – as you said she would – with the information I requested as to who specifically at Senator Clinton's office contacted the Capitol Police.

As to the relevant particulars of my June 25, 1996 arrest, enclosed is my July 3, 2001 letter to Senator Schumer[1] -- referred-to in footnotes 1 and 2 of my today's letter to him. Pages 9-12 are the most pertinent. As I told Special Agent Lippay, whose argument with me on the subject led to my speaking to you -- as her supervisor -- I was

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1 Also enclosed is Exhibit "H" thereto: a copy of the relevant excerpt from the transcript of the Senate Judiciary Committee's June 25, [1996] confirmation hearing.

NOT arrested for any conduct at the Senate Judiciary Committee's hearing, such as rising, at the hearing's conclusion, with a request to testify with "citizen opposition". Nor would I expect to be arrested tomorrow, should the presiding chairman fail to ask if there is anyone who wishes to be heard – thereby burdening me with rising with so fundamental a request. The presiding chairman is in charge – not the police – and it **[p.2]** is his decision whether or not to condemn me to jail for simply exercising my democratic right to be heard in opposition on behalf of the People of New York State and the Second Circuit.

As you did not indicate any other reason for arresting me, I trust there will be no unpleasantness. In any event, I will bring with me my file of the June 25, 1996 arrest, including the file of the police misconduct complaint I filed in connection therewith, should there be any questions. You may be sure – and as is reflected by those files, as likewise by all my communications with Senator Clinton, Senator Schumer, the Senate Judiciary Committee, etc.[2] -- I am a cooperative, conscientious, and law-abiding person, who believes that citizen rights and responsibilities in a democracy should count for something, as likewise evidentiary proof.

Thank you.

s/ Elena Ruth Sassower

Enclosures

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[2] This correspondence is either already – or in the process of being -- posted on CJA's website. Special Agent Lippay may have already checked it out for herself, as I directed her to the website when she questioned me as to the basis of CJA's opposition to Judge Wesley. For that, I asked that she read CJA's March 26, 2003 statement. Indeed, also available on the website are the substantiating two final motions in my important public-interest lawsuit against the Commission, focally discussed therein.

cc: President George W. Bush
Senator Orrin G. Hatch,
Chairman,
U.S. Senate Judiciary Committee
Senator Patrick J. Leahy,
Ranking Member,
U.S. Senate Judiciary Committee
Senator Charles E. Schumer
Senator Hillary Rodham Clinton
New York Court of Appeals Judge
Richard C. Wesley
P. Kevin Castel, Esq.
The Press

[Appellant's Appendix: 104-105]

Petitioner's May 21, 2003 memo to U.S. Senate Judiciary Committee Chairman Orrin Hatch & Ranking Member Patrick Leahy (enclosure to petitioner's May 21, 2003 fax to Capitol Police)

EMERGENCY ATTENTION REQUIRED:

May 22, 2003 Senate Judiciary Committee Hearing on the Confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals

DATE: May 21, 2003

TO: Senator Orrin G. Hatch, Chairman,
U.S. Senate Judiciary Committee
By Fax: 202-224-6331/ 202-224-9102
[15 pages]
By E-Mail: senator_hatch@ hatch.senate.gov
swen_prior@judiciary.senate.gov

Senator Patrick Leahy, Ranking Member,
U.S. Senate Judiciary Committee
By Fax: 202-224-9516 [15 pages]
By E-Mail: senator_leahy@leahy.senate.gov
rachel_arfa@judiciary.senate.gov

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

RE: CJA's request to testify in opposition at the May 22, 2003 hearing on Judge Wesley's confirmation, based on its March 26, 2003 written statement, particularizing the case file evidence ESTABLISHING his corrupt, self-interested, politically-motivated conduct as a New York's Court of Appeals judge, causing on-going and irreparable injury to the People of New York

Enclosed is CJA's letter of today's date to Home-State Senator Schumer, to which you are indicated recipients.

I do NOT wish to be arrested tomorrow for simply exercising a citizen's right in a democracy to peaceably and publicly request to testify in opposition – in the event the presiding chairman at tomorrow's public hearing to confirm Judge Wesley to a **[p. 2]** "lifetime" Circuit Court of Appeals judgeship does not himself inquire – as had previously been done – "if anyone in the room wish[es] to speak on behalf of or against the nominee". [*see* fn. 1 of CJA's enclosed letter].

Further, I request that Capitol Police be instructed NOT to arrest me for peaceably and publicly requesting to testify in opposition -- unless the presiding chairman publicly calls for them to arrest me in response [*see* fn. 2 of CJA's enclosed letter and text on page 2].

Thank you.

s/ Elena Ruth Sassower

Enclosure

cc: President George W. Bush
Senator Charles E. Schumer
Senator Hillary Rodham Clinton
New York Court of Appeals Judge
Richard C. Wesley
P. Kevin Castel, Esq.
Capitol Police Detective Zimmerman
The Press

[Appellant's Appendix: 106-109]

Petitioner's May 21, 2003 memo to New York Home-State Senator Charles Schumer (enclosure to petitioner's May 21, 2003 fax to Capitol Police)

EMERGENCY PERSONAL ATTENTION REQUIRED:

BY FAX: 202-228-4562 [13 pages]
BY E-MAIL: michael_tobman@schumer.senate.gov

May 21, 2003

Home-State Senator Charles E. Schumer
Washington, D.C.

ATT: Michael D. Tobman,
Director of Intergovernmental Affairs
Telephone #: 202-224-6542; 212-486-1842/
212-486-4430

RE: (1) Endorsement of CJA's requests in its May 19, 2003 memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy and, in particular, of CJA's request to be permitted to testify in opposition at the May 22, 2003 hearing on Judge Wesley's confirmation;

(2) Withdrawal of the Senator's "blue slips" approving Senate confirmation of Judge Wesley and of P. Kevin Castel, Esq.

Dear Mr. Tobman:

Following up your phone call to me at about 11:45 a.m, enclosed is CJA's May 19, 2003 memorandum to Senator Schumer, to which we received NO response and which you stated you were not aware of.

Please make sure that it is brought to Senator Schumer's immediate attention so that he may finally take action, consistent with his rhetoric about the importance of scrutinizing federal judicial nominees and his criterion of "excellence"[1].

[p. 2] In addition, since Senator Clinton's office has seen fit to contact Capitol Police (202-224-1495), who at approximately noon today, telephoned and threatened that I would be arrested at tomorrow's confirmation hearing, should I rise to request to testify in opposition[2] and the presiding chairman bang his gavel (even if the presiding chairman does NOT ask that I be arrested[3]) – I

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1 *See, inter alia*, the current May 20, 2003 issue of The New Yorker, "*Advise and Dissent: The fight over the President's judicial nominations*" by Jeffrey Toobin, quoting Senator Schumer.

2 In truth, there is NO REASON why the burden should be on me to request to testify at the Senate Judiciary Committee's public hearing to confirm judicial nominees. Indeed, there used to be a time when the Committee's presiding chairman asked "if anyone in the room wished to speak on behalf of or against the nominee". This is reflected by footnote 5 to CJA's July 3, 2001 letter to Senator Schumer, the Chair of the Subcommittee on Administrative Oversight and the Courts – reprinted, *albeit without exhibits*, in the record of the Subcommittee's June 25 and September 4, 2001 hearings on "The Judicial Nomination and Confirmation Process". CJA's May 5, 2003 memorandum to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy annexes a copy of that reprinted letter as Exhibit "A". I not only personally provided you with a copy of that May 5, 2003 memorandum during our May 14th meeting, but a full copy of the original July 3, 2001 letter, with exhibits.

3 As I told Capitol Police Detective Zimmerman, this would deviate from the precedent at the July 25, 1996 Senate Judiciary Committee hearing to confirm President Clinton's nomination of New York Supreme Court Justice Lawrence Kahn to the District Court for the Northern District of New York – when I was NOT arrested by Capitol Police for rising, at the conclusion of the hearing, with a request to testify with "citizen opposition to Judge Kahn's nomination". That fact is recounted in the body of CJA's July 3, 2001 letter to Senator Schumer. (*see* fn. 1, *supra*). The pertinent extract from the July 25, 1996 hearing transcript is not only Exhibit "H" to the July 3, 2001 letter, but reproduced in the letter itself. (ltr, pp. 10-11;

expressly ask that Senator Schumer endorse my request to be permitted to testify – or at least take steps to ensure that I not be arrested for publicly raising such request at tomorrow's hearing.

According to Capitol Police Detective Zimmerman (badge #2943), Senator Clinton's office contacted Capitol Police to "get involved" because "they did not understand why I continued to contact that office". He identified this as behavior "bordering on harrassment". Please be advised that my "continued contact" with Senator Clinton's office, interpreted as "bordering on harassment" by Capitol Police, consisted of two phone messages left for the Senator's Chief of Staff, Tamara Luzzatto (202-224-4451), the first one at 4:27 p.m. yesterday and the second at 9:43 this morning. In these readily understood messages, I clearly and distinctly requested Ms. Luzzatto's supervisory oversight over the Senator's counsel, Leecia Eva, and legislative correspondence, Josh Albert, with whom I had a 35-minute phone conference yesterday afternoon, ending at about 2:40 p.m. During such phone conference, Ms. Eve and Mr. Albert -- two lawyers, advising a U.S. Senator -- REFUSED my request that they themselves READ CJA's March 26, 2003 written statement, whose contents they **[p. 3]** insisted I summarize to them – and which, during most of our conference, I did summarize -- because, quite evidently, they had NOT read the statement themselves. In any event, by their own admission, they had NOT reviewed ANY of the substantiating documentary evidence, including the two final motions from my public interest lawsuit against the New York State Commission on Judicial Conduct, *focally-discussed in the statement as decisive, in and of themselves, of Judge Wesley's unfitness.* Nonetheless, and entirely ignoring my summary of the statement's recitation of these motion in establishing Judge Wesley's on-the-bench judicial misconduct in TWO public interest cases, whose consequence has been on-

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reprint: at 239).

going, irreparable injury to the People of New York – Ms. Eve purported that I was an "interested party in a lawsuit which had been decided by the courts, including the New York Court of Appeals". Presumably, this was the basis upon which she then declared that Senator Clinton would take no action to stop the May 22nd hearing on Judge Wesley's confirmation, such as by withdrawing her "blue slip" approval, and would not endorse my request to be permitted to testify in opposition at the hearing. Both Ms. Eve and Mr. Albert also REFUSED to agree to my request that they provide the March 26, 2003 written statement to Senator Clinton, for her own review, as likewise to provide her with CJA's May 19th memorandum, addressed to her, requesting her personal review.

Suffice to say, in our today's phone conversation together -- our first conversation since our 40-minute meeting on May 14th at Senator Schumer's Manhattan office[4] -- you have refused to answer my question as to whether Senator Schumer has personally reviewed CJA's March 26, 2003 written statement, let alone examined the documentary evidence substantiating it, including the two boxes containing the lawsuit file, which I left with you during our May 14th meeting. Your steadfast REFUSAL to state ANY opinion as to whether the statement's recitation of Judge Wesley's on-the-bench judicial misconduct was disqualifying, notwithstanding you stated that you did read my October 15, 2002 motion to reargue, vacate for fraud, etc. – and your admission

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[4] Time pressures do not now permit me to list the continuum of urgent telephone messages I left for you since our May 14th meeting, which you chose to ignore as Judge Wesley's nomination was being pushed forward to a hearing -- including by Senator Schumer himself. The further graphic particulars of how this serious and substantial matter was handled by you and Senator Schumer's office – as likewise by Senator Clinton's office – will be separately set forth. This, to advance REAL reform of the federal judicial nomination/confirmation process – and so that New York voters can know what was done to them by their home-state senators.

that you made NO FINDING with respect thereto -- only reinforce the necessity of Senator Schumer's personal review. Such personal review is what was expressly requested by CJA's May 19th memorandum – the same as we sent to Senator **[p. 4]** Clinton.

Finally, so that Senator Schumer may be reminded of the consequences to his New York constituents of a corrupt New York State Commission on Judicial Conduct, as perpetuated by Judge Wesley's utterly self-interested, politically-motivated misconduct in my public interest lawsuit against it, enclosed is a December 22, 2002 letter from one of his constituents, Mrs. Edna May Schreiber, turning to him for help because of "the absolute corruption in Dutchess County Family Court", affecting her and "twenty-five plus families". Senator Schumer apparently did not see fit to respond in any way – including by appropriate referral to the Commission. Perhaps this was just as well -- the Commission having already dismissed, without investigation, the *facially-meritorious* complaints filed with it on Mrs. Schreiber behalf.

A copy of this letter is being sent to Senator Clinton's office – so that Senator Clinton can, among other things, take steps to at least ensure that when I rise at tomorrow's hearing, requesting to be heard in opposition, I am not arrested for peaceably exercising my most fundamental democratic rights. For that reason, I am enclosing the identical letter that Mrs. Edna May Schreiber sent to Senator Clinton, as well as her response thereto, wholly non-responsive to the judicial corruption issues being presented. I discussed this letter and the Senator's non-responsive response with both Ms. Eve and Mr. Albert – I believe even before Ms. Eve unfairly tagged me as being an "interested party to a lawsuit, which has been decided by the courts – including the Court of Appeals".

Mrs. Schreiber and the millions of New Yorkers whose welfare rest on a properly-functioning Commission on Judicial Conduct were just as "interested" in the lawsuit -- one which they had a right to expect their Senators would not to betray. Thankfully, the election of Senators does not give them "lifetime" tenure.

s/ Elena Ruth Sassower

Enclosures

cc: President George W. Bush
Chairman Orrin G. Hatch,
U.S. Senate Judiciary Committee
Ranking Member Patrick J. Leahy,
U.S. Senate Judiciary Committee
Senator Hillary Rodham Clinton
Capitol Police Detective Zimmerman
New York Court of Appeals Judge
Richard C. Wesley & P. Kevin Castel, Esq.
The Press

[Appellant's Appendix: 119]

Petitioner's May 21, 2003 memo to New York Home-State Senator Hillary Rodham Clinton (enclosure to petitioner's May 21, 2003 fax to Capitol Police)

EMERGENCY ATTENTION REQUIRED:

May 22, 2003 Senate Judiciary Committee Hearing on the Confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals

BY FAX: 202-228-0121 [14 pages]
May 21, 2003

Home-State Senator Hillary Rodham Clinton
Washington, D.C. [Tel # 202-224-4451]

Senator Clinton is an indicated recipient to this letter, summarizing the professional misconduct of her counsel, Leecia Eve, her legislative correspondent, Josh Albert – and to top it all, that of her Chief of Staff, Tarara Luzzato, whose response to my two phone messages, requesting to speak with her about the need for her supervisory oversight over Ms. Eve and Mr. Albert – and specifically asking her to review CJA's March 26, 2003 statement, and the May 19, 2003 memorandum, in their possession – was, apparently, to call Capitol Police – as herein recounted.

This is surely a story for Senator Clinton's New York constituents – as well as any citizen who might passingly consider voting for her in a presidential run...

s/ Elena Ruth Sassower

cc: Capitol Police Detective Zimmerman
The Press

Enclosure

[Appellant's Appendix 120-137]

Petitioner's July 3, 2001 letter to Senator Charles Schumer (enclosure to petitioner's May 21, 2003 fax to Capitol Police)

BY FAX: 202-228-0525 (18 pages)
BY EXPRESS MAIL: EM025605966US

July 3, 2001

Senator Charles E. Schumer
Chairman, Subcommittee on Administrative Oversight
and the Courts
Senate Judiciary Committee
313 Senate Hart Building
Washington, D.C. 20510

RE: Statement For the Record of the June 26, 2001 hearing, *"Should Ideology Matter?: Judicial Nominations 2001"*, held by the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts

Dear Chairman Schumer:

As you know, the Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens' organization, based in New York. Our purpose is to safeguard the public interest in meaningful and effective processes of judicial selection and discipline. On the federal level, as likewise on state and local levels, these essential processes take place almost exclusively behind closed-doors. For your convenience, a copy of CJA's informational brochure is enclosed -- similar to one I gave you, *in hand*, on March 20, 1998, when you were seeking election as a Senator from New York.

In the twelve years since our founding in 1989, CJA has had substantial first-hand experience with the Senate

Judiciary Committee under both Democratic and Republican chairmen. Reflecting this is the enclosed copy of CJA's May 27, 1996 letter to then Judiciary Committee Chairman Orrin Hatch, as printed in the record of the Committee's May 21, 1996 hearing on "*The Role of the American Bar Association in the Judicial Selection Process*" (Exhibit "A-1"). The subject of that hearing was whether the ABA should continue to occupy a privileged, semi-official role. This, because the ratings of the ABA's Standing Committee on Federal Judiciary were allegedly tainted by ideological considerations and by ABA "liberal" policy positions.

[p. 2] Inasmuch as CJA received no notice from the Senate Judiciary Committee of the June 26, 2001 hearing, "*Should Ideology Matter?: Judicial Nominations 2001*", held by the Subcommittee on Administrative Oversight and the Courts, which you now chair, I draw your attention to the final paragraph of CJA's May 27, 1996 letter to Chairman Hatch (Exhibit "A-1", p. 127):

> "Finally, we ask that this letter serve as [CJA's] standing request to be placed on a 'notifications' list so that, in the future, we are immediately contacted when matters bearing specifically on judicial selection, discipline, and judicial performance are being considered by the Senate Judiciary Committee or any of its subcommittees."[1]

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[1] This identical request was made in a May 22, 1996 letter to Kolan Davis, then Chief Counsel to the Subcommittee on Administrative Oversight and the Courts – with copies sent to Winston Lett, the Subcommittee's then Minority Counsel, and John Yoo, then General Counsel to the full Committee and to his then Minority counterpart, Demetra Lambros (Exhibit "A-2"). Indeed, CJA's May 22, 1996 letter to these staff counsel is largely identical to CJA's May 27, 1996 letter to Chairman Hatch, except that it does not contain the ten or so particularizing paragraphs summarizing "CJA's more recent contacts with the ABA's Standing Committee on Federal Judiciary, this year and last...." (Exhibit "A-1", pp. 126-127).

We did not learn of your June 26, 2001 Subcommittee hearing until June 25, 2001 – and this, from a front-page item in the New York Law Journal, identifying it as "a hearing to debate the criteria senators should use when voting on President Bush's judicial nominees". I immediately called your office. After verifying that the hearing was focused on ideology, rather than more broadly on "criteria" – as to which CJA would have requested to testify -- I advised that CJA would be submitting a statement for the record of the Subcommittee's hearing. Please consider this letter, *including the annexed substantiating exhibits*, as CJA's Statement for inclusion in the printed record of the June 26th hearing.

In your Op-Ed article in the June 26th New York Times, "*Judging By Ideology*" – as likewise in your prefatory statement at the June 26th hearing -- you confess that Senators privately consider a nominee's ideology, but that because of the taboo surrounding its consideration, they conceal their ideological objections to nominees by finding "nonideological factors, like small financial improprieties from long ago". You state, "This 'got-cha' politics has warped the confirmation process and harmed the Senate's reputation."

While CJA agrees with this assessment and applauds, as long overdue, your readiness to explore the ideological views of judicial nominees – many of whom were, and are, presumably chosen by Presidents precisely for their ideological views -- **we must point out that there is [p. 3] a more fundamental reason why the confirmation process is "warped". It is "warped" because – *except when the Senate Judiciary Committee is searching for some non-ideological "hook" on which to hang an ideologically-objectionable nominee* – the Committee cares little, if at all, about scrutinizing the qualifications of the judicial nominees it is confirming. Indeed, the**

Committee wilfully disregards incontrovertible proof of a nominee's unfitness, as likewise, of the gross deficiencies of the pre-nomination federal judicial screening process that produced him.

The Senate Judiciary Committee's failure to discharge its duty to investigate the qualifications of judicial nominees – notwithstanding its self-promoting pretenses to the contrary – has been powerfully chronicled in the 1986 Common Cause study, Assembly-Line Approval – which made a list of salutary recommendations, most of which appear to be unimplemented today. Other studies, also with unimplemented salutary recommendations, have included the 1988 Report of the Twentieth Century Task Force on Judicial Selection, entitled Judicial Roulette, with a chapter entitled "*Senate Confirmation: A Rubber Stamp?*", as well as the 1975 book by The Ralph Nader Congress Project, The Judiciary Committees, with a chapter entitled "*Judicial Nominations: Whither 'Advice and Consent'?*". These are important resources for the further hearings that your prefatory statement announced would be "examin[ing] in detail several other important issues related to the judicial nominating process"[2].

CJA's own direct, first-hand experience with the Senate Judiciary Committee provides additional – and more recent -- evidence of the Committee's outright contempt for its "advice and consent" constitutional responsibilities

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[2] In particular, your upcoming, as yet unscheduled, two hearings on: "(1) The proper role of the Senate in the judicial confirmation process. What does the Constitution mean by 'advise and consent' and historically how assertive has the Senate's role been?"; and "(2) What affirmative burdens should nominees bear in the confirmation process to qualify themselves for life-time judicial appointments? The Senate process is criticized for being a search for disqualifications. We should examine whether the burden should be shifted to the nominees to explain their qualifications and views to justify why they would be valuable additions to the bench."

and for the public welfare. CJA's experience with the Committee is also unique in that it involves more than opposition to specific nominees. It involves meticulously-documented evidentiary presentations establishing critical deficiencies in the pre-nomination screening process, including as to the "investigations" of the American Bar Association and the pre-eminent Association of the Bar of the City of New York [City Bar]. Specifically, CJA demonstrated, as to one federal District Court nominee, Westchester County Executive Andrew O'Rourke, appointed in 1991 by President George Bush, the gross inadequacy of the ABA's Standing Committee on Federal Judiciary's supposedly "thorough" investigation of his qualifications, as well as the actual "screening [p. 4] out" of information dispositive of Mr. O'Rourke's unfitness by the City Bar's Judiciary Committee. As to another federal District Court nominee, New York State Supreme Court Justice Lawrence Kahn, appointed in 1996 by President Bill Clinton, CJA showed that the ABA Standing Committee on Federal Judiciary had "screened out" information dispositive of his unfitness. Additionally, in 1998, CJA's provided the Senate Judiciary Committee with information from which it could infer that both the ABA and City Bar had "screened out" information bearing adversely on the fitness of Alvin K. Hellerstein, nominated in 1998 by President Clinton to the District Court for the Southern District of New York – whose confirmation CJA opposed. In other words, CJA's contacts with the Senate Judiciary Committee have not been addressed solely to judicial nominees, but to the adequacy and integrity of the judicial screening process.

CJA regards it as a positive step that President George W. Bush has removed a wholly unworthy ABA from its preeminent, semi-official pre-nomination role in rating judicial candidates. Indeed, by letter to the President, dated March 21, 2001 (Exhibit "A-3"), CJA expressed support for such prospective decision, enclosing for his

review a copy of our May 27, 1996 letter to Chairman Hatch (Exhibit "A-1") to illustrate the "good and sufficient reason" for removing the ABA from the pre-nomination screening process. Needless to say, inasmuch as the Senate Judiciary Committee – or at least the Democratic Senators -- are now going to be utilizing the ABA to fulfill a post-nomination screening function, the *readily-verifiable* evidence of the inadequacy and dishonesty of ABA "investigations" of judicial candidates – and of the ABA's persistent refusal to confront that evidence -- are *threshold issues* for the Committee in assessing whether, and under what circumstances, it can rely on ABA ratings. Likewise, to the extent the Senate Judiciary Committee may be increasingly relying on such other bar groups as the City Bar, it is essential that the Committee examine the City Bar's similarly inadequate and dishonest "investigations" and persistent refusal to confront the *readily-verifiable* evidence of its misfeasance.

We do not know the state of the Senate Judiciary Committee's record-keeping. However, **we respectfully suggest that you make it a priority to find out what has become of the voluminous correspondence and documentary materials that the Committee received from CJA.** Most voluminous is CJA's 50-page investigative Critique on the qualifications and judicial screening of Andrew O'Rourke, substantiated by a Compendium of over 60 documentary exhibits, which we initially presented to the Senate Judiciary Committee as our "Law Day" public service contribution in May 1992. As reflected by CJA's May 27, 1996 letter to Chairman Hatch (Exhibit "A-1"), we transmitted to him a duplicate copy of the Critique and Compendium under that letter, along with three Compendia of correspondence **[p. 5]** relating thereto. The most voluminous of these, Correspondence Compendium I, collected CJA's correspondence with the Senate Judiciary Committee and Senate leadership in connection with CJA's May 18, 1992 letter to then Senate Majority Leader George Mitchell

(Exhibit "B-1"). That letter – copies of which CJA sent to *every* member of the Senate Judiciary Committee -- called for a Senate *moratorium* on the confirmations of *all* judicial nominations pending official investigation of the deficiencies of the federal judicial screening process, demonstrated by the Critique. Correspondence Compendia II and III collected CJA's correspondence with the ABA and City Bar concerning their professional obligation to retract their insupportable bare-bones approval ratings for Mr. O'Rourke and to endorse CJA's request for a moratorium and official investigation. By and large, CJA had previously provided this correspondence to the Senate Judiciary Committee.

In regards to the ABA, CJA's May 27, 1996 letter to Chairman Hatch (Exhibit "A-1", p. 125) highlighted the Critique's evidentiary significance in establishing

> "not the publicly-perceived partisan issue of whether the ratings of the ABA's Standing Committee on Federal Judiciary are contaminated by a 'liberal' agenda. Rather, ...the issue that must concern *all* Americans: the gross deficiency of the ABA's judicial screening in failing to make proper threshold determinations of 'competence', 'integrity' and 'temperament'." (emphasis in the original)

Indeed, CJA's May 18, 1992 letter for a Senate moratorium and official investigation stated:

> "To the extent that the Senate Judiciary Committee relies on the accuracy and thoroughness of screening by the ABA and the Justice Department to report nominations out of Committee – with the Senate thereafter functioning as a 'rubber stamp' by confirming judicial nominees <u>without</u> Senate debate – a real and present danger to the public currently exists.

It is not the philosophical or political views of the judicial nominees which are here at issue. Rather, the issue concerns whether present screening is making appropriate threshold determinations of fundamental judicial qualifications – i.e. competence, integrity, and temperament. Our critique of Andrew O'Rourke's nomination leaves no doubt that it is not." (Exhibit "B-1", p. 3, emphases in the original).

[p. 6] Thereafter, on July 17, 1992, The New York Times, published our Letter to the Editor, which it entitled "*Untrustworthy Ratings?*", about our Critique's findings – and about our request for a moratorium "[b]ecause of the danger of Senate confirmation of unfit nominees to lifetime Federal judgeships (Exhibit "B-2").

The Senate Judiciary Committee's response to CJA's fact-specific, documented Critique was to *refuse* to discuss with us *any* aspect of our evidentiary findings – and to call police officers to threaten me with arrest[3] when, after months of Committee inaction and footdragging, ignoring my many attempts to arrange an appointment with counsel, I traveled down to Washington in September 1992 to discuss the serious issues presented by the Critique and by the ABA's refusal to take corrective steps – while, meantime, the Senate was proceeding with confirmations of federal judicial nominees.

Likewise, the Senate Judiciary Committee's response to CJA's May 27, 1996 letter (Exhibit "A-1") – copies of which CJA also sent to *every* member of the Committee -- was to *refuse* to discuss the serious issues it presented, with substantiating proof, *to wit*, "that the problem with the ABA goes beyond incompetent screening. The problem is that the ABA is knowingly and deliberately

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[3] *See* CJA's October 13, 1992 letter to then Senate Judiciary Committee Chairman Joseph Biden, annexed as Exhibit "Z" to CJA's Correspondence Compendium I.

screening out information adverse to the judicial candidate whose qualifications it purports to review." Summarized by the May 27, 1996 letter (Exhibit "A-1", p.126) were facts showing that the Second Circuit representative of the ABA's Standing Committee on Federal Judiciary had wilfully failed to investigate documentary evidence, transmitted by an October 31, 1995 letter (Exhibit "C"), of Justice Kahn's on-the-bench misconduct as a New York Supreme Court judge in an important public interest Election Law case, which, to advance his own political self-interest, he "threw" by a factually fabricated and legally insupportable decision[4], and that the Chairwoman of the ABA's Standing Committee **[p. 7]** on Federal Judiciary was arrogantly disinterested in this wilful failure of the Second Circuit

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[4] The same standard should govern the evaluation of judicial fitness for the bench as governs – at least theoretically -- judicial removal. New York caselaw reflects the long-recognized standard for removal. Thus, in *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept. 1940), the Appellate Division, First Department added italics to emphasize the words from its then over 30-year old decision in *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909),

> *"A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify removal..."*

See, also *Matter of Bolte*, 97 A.D. 551 (1st Dept. 1904), wherein the Appellate Division, First Department held:

> "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another..." (at 568, emphasis in the original).
>
> "Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574)

representative to investigate[5]. The result? In April 1996, President Clinton appointed Justice Kahn to the U.S. District Court for the Northern District of New York, presumably based on a bare-bones ABA rating that Justice Kahn was "qualified".

CJA's May 27, 1996 letter *expressly* stated:

> "Based upon what is herein set forth, we expect you will want to afford us an opportunity to personally present the within documentary proof – which we would have presented at the [May 21, 1996] hearing on "The Role of the American Bar Association in the Judicial Selection Process" – as to how the ABA fails the public, which is utterly disserved and endangered by its behind-closed-doors role in the judicial screening process." (Exhibit "A-1", p. 127)

I daresay most people reading the May 27, 1996 letter would have had a similar expectation – and especially, if they had before them the substantiating documentary proof it transmitted. Conspicuously, the "Editor's Note", appearing at the end of the letter as printed in the record of the Committee's May 21, 1996 hearing on the ABA's role, states: "Above mentioned materials were not available at presstime." (Exhibit "A-1", p. 127). This is most strange as *all* those materials were express mailed to the Committee together with the "hard copy" of the letter.

The *only* response we received to our May 27, 1996 letter (Exhibit "A-1") was a June 13, 1996 acknowledgement

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[5] That Second Circuit representative to the ABA Standing Committee on Federal Judiciary, Patricia M. Hynes, has since become – and currently is – the Committee's Chairwoman. This, because the highest echelons of ABA "leadership" have refused to address the evidence of Ms. Hynes' misconduct in connection with her "investigations" of the qualifications of Justice Kahn and Mr. Hellerstein (Exhibit "M-3") to fill District Court vacancies.

from Senator Strom Thurmond (Exhibit "D-1"), whose form-letter **[p. 8]** text repeated, *verbatim*, the Senator's statement at the May 21, 1996 hearing (Exhibit "D-2"), including that the Senate "carefully review[s]" these nominees, giving "due consideration to the view of others [apart from the ABA], "prior to a vote on confirmation".

The only *other* response CJA received – a June 12, 1996 letter from then Chairman Hatch (Exhibit "F") -- was, ostensibly, to CJA's April 26, 1996 letter to the Committee (Exhibit "E"), requesting to testify in opposition to Justice Kahn's confirmation, as well as answers to various procedural questions. One of these procedural questions, as highlighted in CJA's May 27, 1966 letter (Exhibit "A-1", pp. 126-7), concerned the change in Committee policy to preserve the confidentiality of ABA ratings of judicial nominees until the confirmation hearing.

By this June 12, 1996 letter, (Exhibit "F") Chairman Hatch denied, *without explanation*, CJA's written request to testify in opposition to Justice Kahn's confirmation. Although confirming the Committee's "practice" of not publicly releasing the ABA ratings in advance of the confirmation hearing, Chairman Hatch did not identify how long such "practice" had been in effect and the reason therefor, which is what CJA *expressly* requested to know. He did, however, admit, in response to another question in CJA's April 26, 1996 letter (Exhibit "E"), that "[T]he Judiciary Committee has no written guidelines in evaluating judicial nominees. Each candidate is reviewed on an individual basis by each Senator."

CJA responded with a June 18, 1996 letter (Exhibit "G-1"), requesting that Chairman Hatch explain his peremptory and precipitous denial of our request to testify and that he reconsider his denial based on facts therein set forth. We pointed out that he had not provided us with information as to "what the criterion is for presenting testimony at judicial confirmation

hearings". Additionally, we pointed out that no one from the Committee had ever contacted us as to the basis of our opposition to Justice Kahn, which had not been identified by our April 26, 1996 letter (Exhibit "E"), and that although such identification did appear in CJA's May 27, 1996 letter (Exhibit "A-1", p. 126), *to wit*, that Justice Kahn, as a New York Supreme Court Justice, had

> "used his judicial office to advance himself politically. Specifically,...[he] had perverted *elementary* legal standards and *falsified* the factual record to 'dump' a public interest Election Law case which challenged the manipulation of judicial nominations in New York State by the two major political parties" (emphases in the original),

[p. 9] no one had ever requested that we furnish the Committee with a copy of the substantiating file of that Election Law case for review.

Chairman Hatch *never* responded to this June 18, 1996 letter (Exhibit "G-1"). Rather, on June 25, 1996 at 9:45 a.m., a Committee staffer telephoned us to advise that the Committee's confirmation hearing on Justice Kahn's nomination – whose date we had repeatedly sought to obtain from the Committee, without success -- would take place at 2:00 p.m. *that afternoon*.

Such last-minute notice gave us just over four hours to get from Westchester, New York to Washington, D.C. – a logistical impossibility by surface transportation. At a cost of several hundred dollars, we arranged with a car service to speed me to the airport for a noon flight. At the same time, we sought to clarify from the Committee whether, in making this expensive trip down to Washington, I would be permitted to testify. No clarification was forthcoming (Exhibit "G-2").

The June 25, 1996 Committee "hearing" on Justice Kahn's confirmation – which was held simultaneously with the "hearing" for four other District Court nominees, and immediately following the confirmation "hearing" for a nominee to the Circuit Court of Appeals – fits the description of the Committee staffer quoted in the 1986 Common Cause study, Assembly Line Approval (at p. 10), who termed confirmation "hearings" "as pro forma as pro forma can be".

Apart from Senator Jon Kyl, who was chairing the "hearing" in Chairman Hatch's absence, only one other Committee member, Senator Paul Simon, was present for the boiler-plate questioning of the five District Court nominees, who were called up, *en masse*, to respond, in "assembly-line" fashion, to generic, boiler-plate questions, once questioning of the nominee for the Circuit Court of Appeals had been completed. Chairman Kyl then commended all the nominees as "exceptionally well qualified" and prepared to conclude the "hearing". This, *without* inquiring whether anyone in the audience had come to testify[6] and *without* identifying whether the Committee had received opposition to any of the nominees and its disposition thereof.

[p. 10] It was then that I rose from my seat. Beside me was the box I had brought with me from New York containing the very file evidence of Justice Kahn's on-the-bench misconduct in the Election Law case, which the ABA representative for the Second Circuit had wilfully failed to examine. The transcript of the June 25, 1996 Senate Judiciary Committee "hearing" reflects the following colloquy between me and Chairman Kyl

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6 By contrast, page 234 of The Judiciary Committees, *supra*, describes the Committee's April 21, 1971 hearing to confirm seven judicial nominees. Senator Roman Hruska was presiding. *"Hruska asked if anyone in the room wished to speak on behalf of or against the nominee.* The subcommittee then moved on to the next nominee." (emphasis added).

(Exhibit "H", pp. 790-791):

Sassower: "Senator, there is citizen opposition to Judge Kahn's nomination"

Sen. Kyle: "Let me just conclude the hearing, if we could."

Sassower: "We request the opportunity to testify."

Sen. Kyle: "The committee will be in order."

Sassower: "We requested the opportunity 3 months ago, over 3 months ago[7] -- "

Sen. Kyle: "The committee will stand in recess until the police can restore order."
[Recess]

Sen. Kyle: "As the chair was announcing, we will keep the record open for 3 days for anyone who wishes to submit testimony, and that includes anyone in the audience, or questions from the members of the committee to the panel. Should you have any additional questions, of course, you are welcome to discuss with staff any other questions you have

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[7] Out of nervousness, I erred. April 19, 1996 – the date I had contacted the Committee regarding CJA's request to testify in opposition to Justice Kahn's confirmation – was more than two, not three, months earlier.

concerning the procedure.

The full committee will take up the full slate of nominations both for the circuit court and for the district court at the earliest opportunity. I cannot tell you exactly when, but I will certainly recommend that it be done at the earliest opportunity and I do not see any reason for delay.

Senator Simon, do you have anything else that you wish to add?"

[p. 11]

Sen. Simon: "No. I think we have excellent nominees before us and I hope we can move expeditiously."[8]

Sen. Kyle: "I certainly reflect that same point of view.

Thank you again for being here. We thank everyone in the audience, and I again would say there are 3 days for anyone in the audience to submit any additional statements if you have them. Thank you.

The committee stands adjourned."

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[8] This statement by Senator Simon should be viewed not only in the context of the opposition to Justice Kahn and request to testify, which I articulated in his presence only moments earlier, but in the context of his counsel's representation to CJA in a October 8, 1992 letter, returning the copy of the Critique we had hand-delivered to his Senate office. "While the [ABA] rating does carry weight, *I can assure you* that information provided by individuals who know the nominee, who have practiced before him or her, or otherwise have an interest and contact us is *given every consideration*." (emphases added) *See* Exhibits "U" and "Y" to CJA's Correspondence Compendium I.

It must be noted that in the "recess" noted by the transcript (Exhibit "H", p. 791), which was truly momentary, at least one police officer rushed to me and threatened that I would be removed if I said another word. This officer was one of about five other police officers who were waiting at the side of the room, summoned, I believe, by the Committee's Documents Clerk for the purpose of intimidating me. This, because I had refused to be intimidated by the Clerk's inexplicable surveillance of me, which included his shadowing me about the Senate Judiciary Committee's hearing room from the time I walked in shortly before 2:00 p.m., bullying me and gratuitously warning he was going to have me removed.

As the audience dispersed and Chairman Kyl approached the judicial nominees to congratulate them, I tried to speak with him about the serious nature of CJA's document-supported opposition to Justice Kahn. Chairman Kyl just waved me off. By then, the Committee's Documents Clerk was again at my side, threatening to have me removed for harassing the Committee. I told him then – as I had previously – that I had no desire to harass anyone, but simply wished to discuss CJA's opposition with the appropriate individuals. Yet, I searched in vain for Committee counsel to speak with about CJA's opposition and request to testify. This included approaching the fifteen or so persons who had sat in the chairs behind those reserved for the Senators at the dais. None would identify themselves as counsel or staff with whom I could speak. Nor was there any counsel available at the Committee's adjoining office. Meantime, the Committee's Document Clerk, with three police officers in tow, was again trailing and bullying me.

[p. 12] In the end, I obtained from the Documents Clerk the until-then-withheld ABA rating for Justice Kahn. Of all the judicial nominees up for confirmation, he had

received the lowest: a majority of the ABA Standing Committee on Federal Judiciary voting him "qualified" and a minority voting him "not qualified". However, no sooner did I leave the Senate Judiciary Committee, indeed, in the corridor directly outside its door, I was *arrested* by Capitol Hill police on a completely trumped-up charge of "disorderly conduct" – *and hauled off to jail.*

The shocking particulars of the orchestrated intimidation and abuse to which I was subjected at the Senate Judiciary Committee's June 25, 1996 "hearing" on Justice Kahn's confirmation are chronicled in CJA's June 28, 1996 letter to Chairman Hatch (Exhibit "I-1"), which was submitted for "the record"[9]. This letter, additionally, recites the no less shocking fact that on June 27, 1996, *without* waiting the announced three days for "the record" to be closed and written submissions received, the Committee voted to approve Justice Kahn's confirmation[10].

Thus, CJA's June 28, 1998 letter (Exhibit "I-1") begins:

> "This letter is submitted to vehemently protest the fraudulent manner in which the Senate Judiciary Committee confirms presidential nominees to life-time appointments on the

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9 CJA's June 28, 1996 letter is printed in the record of the Committee's June 25, 1996 "hearing" on Justice Kahn's confirmation (at pp. 1063-1074), but *without* its annexed exhibits. According to the "Editor's note" appearing at the end of the printed letter, "Exhibits A through I are retained in the Committee files" (at p. 1074).

10 As pointed out by CJA's June 28, 1998 letter (Exhibit "I-1", p. 2), in September 1992, when the Committee was trying to deflect the significance of CJA's Critique by pretending it does a "thorough and independent" investigation of judicial nominees, its counsel stated that the Committee waits "at least one week" following the hearing before voting on the nominee [*See* Exhibit "B" to CJA's June 28, 1998 ltr: also annexed to CJA's Correspondence Compendium I as Exhibit "V"].

For a summary of the minutes of the July 27, 1996 Committee meeting pertaining to the judicial nominees, *see* Exhibit "J-7", pp. 4-5 herein.

federal bench and its abusive treatment of civic-minded representatives of the public who, without benefit of public funding, give their services freely so as to assist the Committee in performing its duty to protect the public from unfit judicial nominees.

This letter is further submitted in support of [CJA's] request for immediate reconsideration and reversal of the Committee's illegal vote yesterday, approving confirmation of Justice Lawrence Kahn's nomination as a district court judge for the Northern District of New York...such Committee vote was taken prior to the expiration of the announced deadline for closure of the record **[p. 13]** and without any investigation by the Senate Judiciary Committee into available documentary evidence of Justice Kahn's politically-motivated, on-the-bench misconduct as a New York state court judge, for which he has been rewarded by his political patrons with a nomination for a federal judgeship.

Because this Committee has deliberately refused to undertake essential post- nomination investigation, even where the evidence before it shows that appropriate pre-nomination investigation was not conducted, this letter is also submitted in support of [CJA's] request for an official inquiry by an independent commission to determine whether, when it comes to judicial confirmations, the Senate Judiciary Committee is anything more than a façade for behind-the-scenes political deal-making. In the interim, [CJA] reiterates its request for a moratorium on all Senate confirmation of judicial nominations. Such moratorium was first requested more than four years ago by letter dated May 18, 1992 to former Majority Leader George Mitchell [].

> Copies of that letter were sent to every member of the Senate Judiciary Committee – including yourself." (emphases in the original)

Once again, as with CJA's May 18, 1992 letter to Senate Majority Leader Mitchell (Exhibit "B-1") and CJA's May 27, 1996 letter to Chairman Hatch (Exhibit "A-1"), CJA sent copies of the June 28, 1996 letter (Exhibit "I-1") to *every* member of the Senate Judiciary Committee. Additionally, copies were sent, both my mail and fax[11], to then Senate Majority Leader Trent Lott and then Senate Minority Leader Thomas Daschle (Exhibit "I-2")[12].

Further underscoring the Committee's profound dysfunction and bad-faith was information CJA unexpectedly received within the next days. This information was from two New York citizens active in the fight for good government and constitutional reform, Bill Van Allen and Faye Rabenda. They advised me that on June 7, 1996 -- just five days before Chairman Hatch's June 12, 1996 letter denying CJA's request to testify against Justice Kahn (Exhibit "F") -- they had made a trip to Washington to apprise the Committee of their strong opposition to Justice Kahn's confirmation. This, based on his politically-motivated decision in a public interest case involving local corruption in Duchess County. Such opposition, coming from **[p.14]** individuals who were separate and unrelated to CJA, should have reinforced for the Committee its duty to examine the file of that public interest case, as likewise the file of the public-interest Election Law case which was the basis of CJA's opposition to Justice Kahn for his politically-motivated decision therein. Yet, the Committee recognized no such

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[11] The July 1, 1996 fax coversheets to CJA's June 28, 1996 letter read "Formal Request for Senate moratorium on all judicial confirmations and, in particular, opposition to confirmation of Lawrence Kahn (for N. District - NY)." (Exhibit "I-2").

[12] CJA sent copies of the June 28, 1998 letter to all the indicated recipients (Exhibit "I-1", p. 12), except for President Bill Clinton.

duty. Just as no Committee counsel had interviewed us or requested the substantiating file of the Election Law case, so, likewise, no Committee counsel interviewed Mr. Van Allen and Ms. Rabenda or requested from them their substantiating case file evidence. Indeed, the Committee did not even notify Mr. Van Allen and Ms. Rabenda of the June 25, 1996 "hearing" on Justice Kahn's confirmation or invite them to submit written opposition.

As a result of this unexpected information, which I learned of on or about Friday, July 12th, I telephoned the Senate leadership on the morning of the first business day thereafter, Monday, July 15th. It was then that I learned from the office of then Senate Majority Leader Lott that an "agreement had been reached" between Republicans and Democrats for Senate confirmation the next day of judicial nominees – Justice Kahn, among them. This is reflected by CJA's July 15, 1996 memo to Senate Judiciary Committee counsel (Exhibit "J-1"), faxed to the Committee's office and the offices of the Senate Majority and Minority Leaders (Exhibits "J-2", "J-3"), as well as by CJA's July 15, 1996 letter to Chief Counsel to Senator Herbert Kohl, a Committee member, (Exhibit "J-4")– copies of which were faxed to the Senate Judiciary Committee and Senate Majority and Minority Leaders. As these documents reflect, no Committee counsel saw fit to speak with me and, indeed, I could not even obtain confirmation that the evidentiary materials we had transmitted to the Committee under our May 27, 1996 letter (Exhibit "A-1") would be *immediately* transmitted to the Majority Leader's office, as requested by CJA's July 15, 1996 fax memo to Committee counsel (Exhibit "J-1"):

> "We do not know the status of our transmittal request inasmuch as the Senate Judiciary Committee receptionists have refused to even verify that our fax has been given to its counsel – whose identity I was told is 'confidential' – and have refused to confirm that the materials will, as requested, be transmitted [to the Majority

Leader's office]..." (Exhibit "J-4", p. 2)[13]

CJA also phoned Mr. Van Allen and Ms. Rabenda, who then contacted the Committee, by phone and in writing (Exhibit "K"), requesting that it provide the Senate Majority Leader with **[p. 15]** any "documentation created by the Senate Judiciary Committee staff relating to [their] strong opposition" to Justice Kahn's confirmation, including relating to their June 7th visit to the Committee when they "spoke for approximately 5-10 minutes" with a "staff member".

The upshot of CJA's vigorous efforts to prevent the Senate rubber-stamp confirmation of Justice Kahn's nomination, including a great many long distance phone calls, only partially reflected by the annexed phone bill (Exhibit "J-6")[14], was that, upon information and belief, that nomination, as well as the others, were approved by the usual undebated vote on July 16, 1996 in Executive Session (Exhibit "L").

The flagrant misfeasance of the Senate Judiciary Committee and Senate leadership, chronicled by the annexed exhibits and further established by CJA's voluminous correspondence and substantiating documents that should be stored somewhere in the Senate Judiciary Committee's files, serves no purpose but to enable Senators to continue to "wheel and deal" judicial nominations, cavalierly using them for patronage or for trading with their Congressional colleagues and the President for other valuable consideration or promises thereof – to the lasting detriment of the People of this

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13 As reflected by my Descriptive Chronology (Exhibit "J-7"), not only did Committee counsel never see fit to speak with me, but such counsel purportedly decided that CJA's documentary materials needed to remain at the Senate Judiciary Committee (Exhibit "J-7", p. 4).

14 I made contemporaneous notes of some of my July 15-16, 1996 phone conversations. These are retyped and annexed as Exhibit "J-7".

nation.

Obviously, a Senate Judiciary Committee which so shamelessly spurns the evidence-based presentations of a non-partisan, non-profit citizens' organization, whose advocacy meets the highest standards of professionalism[15], is not treating with greater respect and decency the average citizen who comes forward to oppose confirmation of individual judicial nominees. This certainly is reflected in the way the Committee treated good government activists Bill Van Allen and Faye Rabenda (Exhibit "K"), whose opposition to Justice Kahn should not have been rejected by the Committee, without further inquiry, and all the more so as their opposition reinforced the significance of CJA's own.

[p. 16] Hopefully, with your chairmanship of the Subcommittee on Administrative Oversight and the Courts – and your vision of this and the upcoming three hearings "at least" as an "important dialogue" on the Senate's role in judicial nominations – essential reforms will be made in how the Senate Judiciary Committee – and the Senate -- discharge the "advice and consent" function. Certainly, the absolute necessity that the Committee and Senate scrutinize the competence, integrity, and temperament of judicial nominees is reinforced by the fact that the mechanisms for disciplining and removing incompetent, dishonest, and abusive federal judges from the bench are *verifiably* sham and dysfunctional.

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[15] Adding to the Senate Judiciary Committee's shameless and dishonest treatment of us in 1992 and 1993, in connection with our Critique and moratorium request, and in 1996, in connection with our opposition to Justice Kahn's confirmation and further moratorium request, is its behavior toward us in 1998 in connection with our opposition to Alvin Hellerstein's confirmation. This behavior is reflected by the recitation appearing in CJA's July 30, 1998 and August 3, 1998 letters to Committee staff (Exhibits "M-1" and "M-2"), as well as in the recitation and question in CJA's August 19, 1998 letter (Exhibit "M-3")– to which, tellingly, we received NO response.

On this vital subject, I would note that when I handed you a copy of CJA's informational brochure on March 20, 1998 – following your lecture at Ansche Chesed Synagogue on New York's Upper West Side – I also gave you a copy of my published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View, Massachusetts School of Law, Vol. 4, No. 1 (Summer 1997)). It exposes the *façade* that passes for the disciplinary complaint mechanism for federal judges under 28 USC §372(c) and the House Judiciary Committee's *non-existent* capacity and willingness to investigate judicial impeachment complaints (Exhibit "N-1"). A copy of this important article had been sent to the House Judiciary Committee – *of which you were then a member* – under a March 10, 1998 memorandum addressed to the House Judiciary Committee's Chairman and members, a copy of which I also handed you (Exhibit "N-2").

In the event you harbor the unwarranted belief that the House Judiciary Committee is any different from the Senate Judiciary Committee in its flagrant disrespect for fully-documented written presentations, enclosed is CJA's Statement for the record of the House Judiciary Committee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary", held by the Courts Subcommittee (Exhibit "O-1")[16]. Its opening sentence *expressly* identifies that it is presented

> "so that members of Congress and the interested public are not otherwise misled into believing that the House Judiciary Committee or its Subcommittee is meaningfully discharging its duty to oversee the federal judiciary. It is not."

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16 A copy of the documentary Compendium substantiating CJA's Statement should be in the possession of the Senate Judiciary Committee – having been furnished by CJA's August 19, 1998 letter to it ("Exhibit "M-3"). The coverpage to that Compendium is annexed hereto as Exhibit "O-2".

Described therein is the failure and refusal of the House Judiciary Committee to respond to CJA's March 10, 1998 memorandum (Exhibit "N-2/N-1") and to a further March 23, 1998 **[p. 17]** memorandum (Exhibit "N-3"), substantiated by CJA's transmittal of *readily-verifiable* documentary proof that the mechanisms for ensuring the impartiality of federal judges -- and for disciplining and removing those who are unfit -- have been reduced to "empty shells". Detailed, as well, is the refusal of the House Judiciary Committee's Courts Subcommittee to permit CJA to testify on the subject at its June 11, 1998 "oversight hearing" – where the *only* witnesses allowed to testify were representatives of the judiciary. The Subcommittee responded to this Statement (Exhibit "O-1") by excluding it from the printed record of its June 11, 1998 "oversight hearing" – which it did wholly without notice to CJA (Exhibit "O-3").

Since your Subcommittee on Administrative Oversight and the Courts, assumedly, has concurrent jurisdiction with the House Courts Subcommittee, CJA respectfully requests that while you are clarifying with the Senate Judiciary Committee the whereabouts of CJA's 1992 Critique and voluminous document-supported correspondence, you also clarify with the Courts Subcommittee of the House Judiciary Committee the whereabouts of the voluminous documentation CJA provided to that Committee, substantiating, *incontrovertibly*, that the federal judiciary has gutted the federal statutes relating to judicial discipline and recusal and that the House Judiciary Committee has abandoned its oversight over federal judicial discipline, including its impeachment responsibilities. In the event the Senate and House Judiciary Committees are unable to locate this dispositive documentation, CJA will furnish you with duplicate copies.

We look forward to testifying at upcoming hearings of

your Subcommittee – which should be on issues of *both* federal judicial selection and federal judicial discipline. **As the situation currently exists, with the Senate Judiciary Committee *demonstrably* disregarding its duty to scrutinize qualifications of judicial nominees and the House Judiciary Committee *demonstrably* disregarding evidence of serious judicial misconduct, the lives and liberties of this nation's citizens are at the mercy of judges who should *not* be on the bench in the first place and who grossly abuse their judicial powers after they get there, *without* the slightest fear of discipline, let alone removal.**

[p. 18] We welcome your able leadership. Ensuring that the public is protected by properly functioning processes of federal judicial selection and discipline should be a *top priority*.

Yours for a quality judiciary,

s/

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosure: CJA's informational brochure

cc: President George W. Bush
Senate Majority Leader Thomas Daschle
Senate Minority Leader Trent Lott
Senator Hillary Rodham Clinton
Senate Judiciary Committee members
(w/o exhibits)
House Judiciary Committee
Common Cause
The Century Foundation
Ralph Nader,
Center for the Study of Responsive Law
American Bar Association
Association of the Bar of the City of New York
Bill Van Allen/Faye Rabenda (w/o exhibits)

[Appellant's Appendix: 1552-1553, 1564]

Transcript excerpt of the Senate Judiciary Committee's May 22, 2003 public hearing to confirm the nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals

[transcript page 65, line 15 – page 66, line 20]

[*note – see petitioner's analysis (A-179 herein) as to discrepancies between transcript & videotape*]

Presiding Chairman Saxby Chambliss: That being said, if there are no further questions or participation from anyone on the Committee, we will stand adjourned.

Thank you very much.

[Voice of unidentified woman in audience:]

Voice. Mr. Chairman, we are in opposition to Judge Wesley based on his documented corruption at the New York Court of Appeals.

Senator Chambliss. I will issue a warning that we will have order. The Committee will stand in recess until the police can restore order. Everyone remain seated.

[Pause.]

Voice. Are you directing that I be arrested?
Are you directing that I be arrested?

Senator Chambliss. I am directing that the police restore order.

Voice. Are you directing that I be arrested?

[Pause.]

Senator Chambliss. Outside witnesses are welcome to submit letters supporting or opposing nominees for the Committee's consideration, but it is not our usual procedure to invite outside witnesses to testify either in support or in opposition to the nomination.

I realize this lady is disappointed that she is not able to make any statement this afternoon, but her disappointment in no way condones any disruption of this hearing.

Again, we will stand adjourned.

Thank you very much.

[Whereupon, at 3:32 p.m., the Committee was adjourned.]

[Appellant's Appendix 265-288]

Petitioner's February 23, 2004 pre-trial motion for Judge Holeman's disqualification, postponement /continuance of trial, transfer, etc.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

———————————— x

UNITED STATES OF AMERICA

No. M-04113-03

-against-

ELENA RUTH SASSOWER

———————————— x

Notice of Motion to Disqualify Judge Brian F. Holeman & for Postponement/Continuance of the March 1, 2004 Trial Date Pending Responsive, Written Adjudication of Defendant's Still-Outstanding October 30, 2003 Motion to Enforce her Discovery Rights, the Prosecution's Disclosure Obligations, and for Sanctions

———————————————————————

PLEASE TAKE NOTICE that upon the annexed affidavit of defendant ELENA RUTH SASSOWER, sworn to February 23, 2004, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, ELENA RUTH SASSOWER will move this Court at 500 Indiana Avenue, N.W., Washington, D.C. 20001 as soon as can be heard, for an order granting:

(1) Disqualification of Judge Brian F. Holeman, pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts;

(2) Postponement/continuance of the scheduled March 1, 2004 trial date, chargeable to the Government or the Court, pursuant to Rule 16(d)(2) of the Superior Court Rules of Criminal Procedure, pending responsive,

written adjudication of defendant's still-outstanding October 30, 2003 motion to enforce her discovery rights, the prosecution's disclosure obligations, and for sanctions -- including responsive, written adjudication of defendant's December 3, 2003 affidavit in reply and in further support of her motion; and

(3) Such other and further relief as may be just and proper, including ensuring the appearance and actuality of fair and impartial justice by transferring this politically-explosive case to a court outside the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President, with the advice and consent of the Senate or one of its committees.

Dated: February 23, 2004
White Plains, New York

_____s/_____

ELENA RUTH SASSOWER
Defendant *Pro Se*
16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 949-2169

TO: U.S. Attorney for the District of Columbia
Assistant U.S. Attorney Aaron Mendelsohn
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7700 / (202) 514-4991

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

———————————————— x

UNITED STATES OF AMERICA

No. M-04113-03

-against-

ELENA RUTH SASSOWER

———————————————— x

Affidavit in Support of Defendant's Motion to Disqualify Judge Brian F. Holeman & for Postponement/Continuance of the March 1, 2004 Trial Date Pending Responsive, Written Adjudication of Defendant's Still-Outstanding October 30, 2003 Motion to Enforce her Discovery Rights, the Prosecution's Disclosure Obligations, and for Sanctions

———————————————————————

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the above-named defendant, acting *pro se*, criminally charged with "disruption of Congress" and facing punishment of six months in jail and a $500 fine.

2. This affidavit is submitted in support of the relief set forth in the accompanying notice of motion.

3. The facts herein particularized further substantiate my contention, reiterated at the outset of my still-outstanding October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions, that:

> "to ensure the appearance and actuality of fair and impartial justice, it is appropriate to transfer this politically-explosive case to a court outside

the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President, with the advice and consent of the Senate or one of its committees." (at ¶3)

4. For the convenience of the Court, a Table of Contents follows:

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Background to the Court's Demonstrated Actual Bias and to the December 3, 2003 Oral Argument before Senior Judge Stephen Milliken on my October 30, 2003 Discovery/Disclosure/Sanctions Motion .... [A-117]

The Biased Adjudications of Senior Judge Millikenat the December 3, 2003 Oral Argument – Obvious to Any Fair and Impartial Tribunal ..... [A-121]

The Court's Disregard of, and Complicity in, Assistant U.S. Attorney Aaron Mendelsohn's Wilful Violation of my Due Process Right to Notice and Opportunity to be Heard as to the Sufficiency of his "*Ex Parte In Camera*" Submission.....,..... [A-125]

My Entitlement to Postponement/Continuance of the March 1, 2004 Trial Date, Chargeable to the Government or the Court, Pending Responsive, Written Adjudication of my Still-Outstanding October 30, 2003 Discovery/ Disclosure/Sanctions Motion..... [A-127]

* * *

The Demonstrated Actual Bias of Judge Brian Holeman, Entitling me to his Disqualification

5. The first branch of relief -- for the disqualification of Judge Brian Holeman – is based upon what was initially the appearance and is now the actuality that he is not fair and impartial.

6. The facts creating this appearance and actuality are reflected in my three letters to the Court, dated January 22, 2004, February 4, 2004, and February 10, 2004 (Exhibits "T-1", "T-2", and "T-3")[1], faxed on those dates and thereupon mailed.

7. Because these letters "speak for themselves" – indeed, because this disqualification motion has been necessitated by the Court's wilful failure to respond to the latter two letters, following its non-responsive response to the first letter -- the contents of all three letters are herein set forth *verbatim*:

Letter #1: January 22, 2004 **(Exhibit "T-1")**

"Dear Judge Holeman:

> This responds to the disturbing phone call I received this morning from your judicial administrative assistant, Sherron Offer, who stated that you had instructed her to tell me that I be requested 'not [to] call chambers' and that my matter is 'under advisement'.

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[1] The exhibits annexed hereto continue the sequence from my moving affidavit in support of my October 30, 2003 discovery/disclosure/sanctions motion ["A"-"O"], my December 3, 2003 reply affidavit ["P"-"R"], and my December 31, 2003 affidavit in opposition to the prosecution's motion *in limine* and in further support of my discovery/disclosure/sanctions motion ["S"].

With all due respect, such instruction does not reflect a fair and impartial tribunal – and I so stated to Ms. Offer, reviewing with her the pertinent facts and circumstances, which she already knew because she had answered the phone yesterday afternoon when I called (202-879-4208).

The purpose of that phone call was entirely proper: (1) to confirm that you were, in fact, the long-awaited new judge assigned to the case; and (2) with regard to my October 30, 2003 motion to enforce my discovery rights and the prosecution's disclosure obligations, to verify whether you had received any submission from the U.S. Attorney to my August 12, 2003 First Discovery Demand – as to which, at the December 3, 2003 oral argument of the motion, Judge Milliken had fixed a January 14, 2004 deadline. I stated to Ms. Offer that I myself had received nothing from the U.S. Attorney.

For Ms. Offer to tell me that you had instructed her to say that the matter is 'under advisement' is to suggest that you believe that I was calling for rulings, which is not the case. Indeed, nothing I said to Ms. Offer in our yesterday's conversation could have remotely given her any such misimpression to communicate to you. Nor is there any basis for a request that I 'not call chambers' – as if there was something inappropriate in my call – or for the Court's refusing – as it apparently has – to respond to my straightforward inquiry as to whether it has received anything from the U.S. Attorney. As I stated to Ms. Offer, I have rights flowing from noncompliance by the U.S. Attorney with the January 14, 2004 deadline. This, in addition to the fact that the Court should want to know – and needs to know -- that I have received nothing

from the U.S. Attorney in connection with that deadline. Such is legitimately brought to the Court's attention, at least initially, by a call to chambers.

It may be noted that prior to your recent entry into this case, I had substantial phone communications with the chambers of predecessor judges. Such is reflected by my faxed correspondence to the various judges and law secretaries, which should be part of the Court's file. To my knowledge, your request that I 'not call chambers' is the first such request I have encountered – and all the more jarring for that reason.

As I understand it, Courts are supposed to be solicitous of *pro se* litigants. However, I am not asking for any special courtesies. Rather, I am asking to be treated in a fashion comparable to attorneys who freely call chambers with questions as to such procedural, non-substantive matters as here at issue.

So that there is no misunderstanding on the subject – and no violation of my rights as a *pro se* criminal defendant -- I respectfully request that the Court respond in writing with respect to the foregoing or that its law clerk telephone to advise.

Thank you."

Letter #2: January 30, 2004 **(Exhibit "T-2")**

"Dear Judge Holeman:

This responds to the phone message left on my voice mail in the hours following the Court's receipt of my January 22, 2004 fax.

I have transcribed that message as follows:

> 'Hello. This message is for Elena Sassower. This is Sara Pagani, I'm the law clerk for Judge Brian Holeman. I'm calling in response to the fax you sent to our chambers regarding your case in Superior Court. I'm calling to let you know that, as a courtesy, we're calling you again, but the judge's position has not changed. If you need information about whether discovery or responses have been provided, you are welcome to go to the Clerk's office, present your identification, and see the file. You can also contact the U.S. Attorney's for information regarding your case. We cannot answer any further questions at this time. But if at some point we need to contact you, we will do so. Thank you.'

Such message only reinforces my belief – expressed at the outset of my January 22nd fax – that the Court is 'not a fair and impartial tribunal'.

So that I may be guided accordingly in protecting my constitutional rights, please advise whether it is your policy to request attorneys and *pro se* litigants not to call chambers with their inquiries regarding *procedural, non-substantive matters* pertaining to cases before you.

If you have no such policy, I intend to make a motion for the Court's disqualification based upon the wholly unwarranted, invidious mistreatment of me reflected by my January 22nd fax and uncontradicted by Ms. Pagani's message. In any event, I call upon you to make disclosure – as is your duty under Canon 3E of the District of

Columbia's Code of Judicial Conduct – of any facts and circumstances bearing adversely upon your ability to be fair and impartial.

Finally, I have been informed by Dan Cipullo, Director of the Superior Court's Criminal Division, that the computerized court records -- which were presumably just as instantaneously accessible to your chambers on January 22nd as they were to him on January 27th -- that on January 14th the government filed an

> 'ex parte in camera submission regarding evidence relative to bias cross-examination of government witness'.

This does not represent compliance with Judge Milliken's direction to Assistant U.S. Attorney Aaron Mendelsohn on December 3, 2003. Such direction required Mr. Mendelsohn to produce more than just personnel records -- the only aspect of production for which 'ex parte in camera' review is appropriate. Moreover, as to such personnel records, the direction was not limited to merely one 'government witness', presumably Sergeant Bignotti. Indeed, even Judge Milliken, who manifested his disqualifying bias and interest by his failure and refusal to 'throw the book' at Mr. Mendelsohn, as any fair and impartial tribunal would have done, recognized that Mr. Mendelsohn had to 'revisit' his responses to my August 12, 2003 First Discovery Demand.

Upon receipt of the transcript of the December 3, 2003 oral argument of my October 30, 2003 motion to enforce my discovery rights and the prosecution's disclosure obligations, *which I ordered on that date with a $30 deposit and for which I made full payment of an additional $99*

nearly a month ago, it is my intention to make an appropriate motion to secure the full relief to which Judge Milliken – and, more importantly, any fair and impartial review of the record of my October 30, 2003 motion shows me to be overwhelmingly entitled.

Thank you."

Letter #3: February 10, 2004 **(Exhibit "T-3")**

"Dear Judge Holeman:

I have received no response – by fax, e-mail, mail, or phone – to my January 30, 2004 letter, faxed and mailed to you.

Such letter asserted my growing belief, born of my most initial contacts with the Court, that you are 'not a fair and impartial tribunal'. To enable me to properly evaluate whether a motion for your disqualification is an appropriate course, my January 30th letter asked that you advise:

> 'whether you have a policy to request attorneys and *pro se* litigants not to call chambers with their inquiries regarding *procedural, non-substantive matters* pertaining to cases before you.' (p. 2, underlining and italics in the original).

Additionally, my January 30th letter called upon you:

> 'to make disclosure – as is your duty under Canon 3E of the District of Columbia's Code of Judicial Conduct – of any facts and circumstances bearing adversely upon your ability to be fair and impartial.' (p. 2).

As I have now received the transcript of the December 3, 2003 oral argument of my October 30, 2003 discovery/disclosure motion, I take this opportunity to add a further inquiry germane to my potential motion for your disqualification: Was it you to whom Judge Milliken referred when he stated that the new judge who would be handling this calendar and this case had 'just stepped out', but had 'heard the bulk of the arguments in the case today' [Tr. 34, lns. 24, 21-22]? If so, at what point did you leave the courtroom?

To prevent prejudice beyond that already caused by your January 22nd blanket directive that I not call chambers, which – if not part of an across-the-board general policy -- served no purpose but to impede me in protecting my legitimate rights with respect to my dispositive October 30, 2003 discovery/disclosure motion, as likewise from clarifying how I am to proceed with such related procedural issues as my subpoenaing of witnesses whose testimony will relate to the documents sought by that motion, please fax (914-428-4994) your response to my foregoing inquiries by Thursday, February 12th at the latest so I that I may decide on an appropriate course without further delay.

Finally, insofar as my January 30th letter reflects your view, enunciated by your law clerk, that I could gain necessary information by contacting the U.S. Attorney's office, enclosed is a copy of my faxed and e-mailed February 4, 2004 letter to Assistant U.S. Attorney Aaron Mendelsohn, requesting that he identify the content of his '*ex parte in camera*' submission to the Court in response to Judge Milliken's January 14, 2004 deadline. Although I asked for his expeditious response, I have yet to receive anything.

Thank you."

8. Thus established is the Court's wilful refusal to respond to the straightforward question as to whether it has a policy of requesting attorneys and *pro se* litigants to not call chambers with their *procedural, non-substantive* inquiries. This, in face of notice that such information was critical to my deciding whether to make this disqualification motion.

9. The reasonable inference is that the Court has no such policy and that it does not wish to identify such fact because doing so would expose its invidious treatment of me, to which it has steadfastly adhered, over my protests and with knowledge of its prejudice to my legitimate rights.

10. As the record herein is totally DEVOID of any basis for the Court's treating me differently from attorneys and other *pro se* litigants, nothing more is needed to establish my entitlement to the Court's disqualification for actual bias.

11. Indeed, prior to my first and only January 21st telephone call to the Court's chambers, resulting in its startling instruction to me not to call again, I had NO interaction with the Court.

12. To the extent that the Court, new to the bench[2] and newly-assigned to the case[3], had any pre-

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[2] This Court's appointment by President George W. Bush was made on May 22, 2003 – the same day as I was arrested at the Senate Judiciary Committee for "disruption of Congress". Its confirmation hearing before the Senate's Committee on Government Affairs was on September 30, 2003. Without a printed report, the appointment was placed on the Senate Executive Calendar on October 22, 2003. Senate confirmation was on October 24, 2003, by voice vote.

[3] At the December 3, 2003 oral argument of my October 30, 2003 motion, Judge Milliken not only described the new judge who

judgment about me, its only legitimate source is the record. Yet, the only judgment possible from objective review of my motion papers, my correspondence to predecessor judges and their law clerks, and the audiotape/transcripts of court conferences is that I am a highly professional, painstaking, and effective advocate in my own defense. My October 30, 2003 discovery/disclosure/sanctions motion is the most stellar representation of this.

13. It is my belief – reflected by my letters – that the reason for the Court's unexplained conduct in instructing me not to call chambers – was to prevent me from safeguarding my rights with respect to my October 30, 2003 discovery/disclosure/sanctions motion and, further, to thwart my ability to properly proceed with such related pre-trial issues as subpoenaing witnesses whose testimony will relate to the documents sought by the motion.

14. The fact that throughout this past month, as the clock has steadily ticked to the March 1, 2004 date which Judge Milliken fixed for trial, the Court has not only wilfully ignored the threshold issues of its disqualification and duty of disclosure, in violation of Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts, but, additionally, the issues I have raised with respect to my October 30, 2003 motion, suggests that this biased Court is maneuvering to bring me to trial without the documents and witnesses to which I am entitled and on which my defense rests.

15. That the Court has not even reacted to Mr. Mendelsohn's deliberate failure to provide me with <u>any</u> information that would enable me to evaluate his

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would be assigned to this case as having "heard the bulk of the arguments today", but that he "is going to be so familiar with [my] record that it's going to frighten [me]" (Exhibit "W", p. 34, lns. 18-22). He further stated that it was his "educated guess that the judge would be thoroughly prepared for [my] case." (Exhibit "W", p. 35, lns. 8-10).

compliance with Judge Milliken's January 14, 2004 deadline, such that I am completely in the dark, only reinforces that belief. No fair and impartial tribunal could deem this acceptable based on the record herein.

Background to the Court's Demonstrated Actual Bias and to the December 3, 2003 Oral Argument before Senior Judge Stephen Milliken on my October 30, 2003 Discovery/Disclosure/Sanctions Motion

16. The Court's unexplained, severely prejudicial behavior fits within a pattern of conduct identified by the very first footnote of my October 30, 2003 discovery/disclosure/sanctions motion:

> "The record in this case, as in the 1997 case against me on a trumped-up 'disorderly conduct' charge (D-177-97), suggest a pattern by this Court of rushing criminal cases to trial, without concern for defendants' discovery rights -- at least where the arrests involve U.S. Capitol Police and the U.S. Senate Judiciary Committee." (at fn. 1)

17. As an example, ¶12 of the motion cited what Judge Milliken did on Monday, September 22, 2003, in my absence – the first day the Court was open following a two-day closure on September 18-19, 2003 caused by hurricane Isabel. Although I did not have the September 22nd transcript when I wrote ¶12, I subsequently received it (Exhibit "U-1"). What it shows is that Judge Milliken was informed by the deputy clerk that I did not have counsel and that on September 19th the case had been down for "a status hearing for [me] to ascertain [my] own counsel". Judge Milliken's response, without the slightest prompting from the Assistant U.S. Attorney then present, was *not* to schedule a new "status hearing" for ascertainment of counsel. Rather, he directed that a judicial summons be issued, setting the

case down for an October 21, 2003 trial (Exhibit "U-2"). The surprised deputy clerk responded "A trial?", to which Judge Milliken cavalierly answered, "Yeah. Why not?" (Exhibit "U-1").

18. This shocking transcript was in my possession by December 2, 2003, the day I learned from Judge Hess's chambers that Judge Milliken would be presiding over the next day's oral argument of the motion.

19. Immediately upon learning this, which was late in the afternoon on December 2nd, I telephoned Judge Milliken's chambers to verify whether, in fact, he would be presiding – and to make known my view that he could not fairly and impartially do so based on his conduct on September 22nd. I spoke with Judge Milliken's law clerk, Dan Rosenthal, who knew nothing about my discovery/disclosure/sanctions motion or the next day's oral argument. Indeed, it became clear that Judge Milliken had not seen – let alone studied – the motion whose voluminous and substantial nature I described to Mr. Rosenthal.

20. Because it seemed pointless to make an exhausting and expensive 250-mile trip to Washington for oral argument before a judge who, until then, was wholly unfamiliar with so substantial a motion, I told Mr. Rosenthal that I was willing to waive oral argument. Instead, I would rest on my reply affidavit to Mr. Mendelsohn's opposition which I was just then completing.

21. Mr. Rosenthal called me back after obtaining my motion, which I believe he located not in chambers, but in the file in the Clerk's office. He stated to me, either in that call or in his subsequent call to me, that Judge Milliken had instructed him to tell me that oral argument would proceed the next day, that my appearance was required, that I could not have my attorney, Mark Goldstone, appear on my behalf, which I

offered, and that if I did not appear a warrant for my arrest might be issued.

22. My response to Mr. Rosenthal was that this further demonstrated the improper and biased conduct that Judge Milliken had exhibited on September 22nd – as to which I had read the transcript to Mr. Rosenthal.

23. Solely because of the threat that Judge Milliken might issue a warrant for my arrest, I ultimately decided not to rely on Mr. Goldstone appearing for me at the oral argument. Inasmuch as my final words to Mr. Rosenthal in the early evening of December 2nd had been that I would not be coming – I faxed chambers shortly after midnight on December 3rd, underscoring "I will be present" (Exhibit "V-1"). Enclosed with the fax was my reply affidavit, by then completed and already faxed to Mr. Mendelsohn.

24. I delivered the "hard copy" of this reply affidavit to Judge Milliken's chambers[4] immediately upon arriving at the courthouse about an hour and a half before the oral argument. That done, I sought supervisory oversight from Chief Judge Rufus King, spending a considerable amount of time on the phone outside his Chambers for such purpose. I then went to Mr. Cipullo's office and complained to him about the judicial misconduct in this case – as well as in the predecessor 1997 case. I believe I either showed or read him footnote 1 of my motion about the pattern in both cases of being rushed to trial, without concern for my discovery rights. In any event, I showed him

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[4] It is this reply affidavit to which Judge Milliken referred at the outset of the December 3rd oral argument in stating, "I left the bench not too long ago fully intending to start this hearing at 2 o'clock. I got to my desk and, lo and behold, found a good thick submission that had been dropped off by the defendant so I took pains to review that." (Exhibit "W", p. 2, lns. 9-11).

substantiating transcripts, including the September 22nd transcript involving Judge Milliken[5].

25. With regard to that day's oral argument, I told Mr. Cipullo that I believed the true reason it had been scheduled by Judge Ronald Wertheim in the first place – and then insisted on by an unprepared Judge Milliken -- was so that the motion could be disposed of from the bench, without a written decision, in a fashion that would deprive me of the relief to which I was entitled.

26. Unbeknownst to me, but presumably known by Judge Milliken, Mr. Cipullo was in the courtroom a short time later for the oral argument[6].

27. This is the pertinent background to the December 3rd oral argument (Exhibit "W") and the mishmash of ambiguous, contradictory, insufficient, and factually unsupported rulings and statements that a demonstrably biased Judge Milliken made from the bench with respect to my October 30, 2003 discovery/disclosure/sanctions motion.

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[5] With respect to the 1997 criminal case against me for "disorderly conduct", I not only showed and discussed with Mr. Cipullo the transcript of the April 4, 1997 proceeding before Senior Judge Tim Murphy (Exhibit "X-1"), but my April 2, 1997 affidavit in support of my "Motion for A Continuance" (Exhibit "Y"), disrespectfully referred to by Judge Murphy as my "lengthy motion or whatever" (Exhibit "X-1", ln. 10). Additionally, I showed and discussed with Mr. Cipullo my subsequent exchange of correspondence with Judge Murphy (Exhibit "Z-1" and "Z-2") relating to his April 4, 1997 issuance of a bench warrant against me (Exhibit "X-2") -- culminating in my final May 26, 1997 letter (Exhibit "Z-3") to which Judge Murphy did not respond and as to which, upon requisitioning the file on June 20, 2003, I found a hand-written notation reading "*File-no response.*" (Exhibit "Z-4").

[6] I only learned of this much later during the course of my phone conversation with Mr. Cipullo reflected by my January 30, 2004 letter to the Court (Exhibit "T-2", p. 2).

The Biased Adjudications of Senior Judge Milliken at the December 3, 2003 Oral Argument – Obvious to Any Fair and Impartial Tribunal

28. Whether or not the Court was present at the December 3rd oral argument (Exhibit "W", p. 34, lns. 18-25), it has had more than ample time to hear the audiotape of the proceeding and to compare it with my October 30, 2003 motion. Review of the motion, including my December 3, 2003 reply affidavit, suffices for any fair and impartial tribunal to know that Judge Milliken's from-the-bench dispositions were biased and improper[7].

29. Most glaring was Judge Milliken's pretense that I was not entitled to sanctions against Mr. Mendelsohn, which he accomplished by NOT addressing ANY of the facts or law presented by my motion. Rather, he simply disposed of the sanctions and prosecutorial misconduct issues by falsely characterizing them as more "heat" than "light" and as being "not relevant" and "not pertinent" (Exhibit "W", p. 5, lns. 8-11; p. 9, lns. 21-25; p. 14, lns. 9-11). No objective reading of my motion could support such characterizations -- or remotely justify the forbearing "kid glove" treatment Judge Milliken gave to Mr. Mendelsohn for his demonstrated discovery violations, including when chastising him for his "bold statement" and "glaring omission" (Exhibit "W", p. 3, ln. 3; p. 4, ln. 14) in excising the words "which are material

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[7] At the conclusion of the December 3rd oral argument, Judge Milliken acknowledged having "already read transcripts of [his] earlier touch with this case" and being "absolutely aware of [his] prior presiding over this case" from "reading [my] papers" (Exhibit "W", p. 41). Such statements were in the context of my attempting to hand up to him, off-the-record, a copy of the September 22nd transcript, several copies of which I had brought with me to substantiate the motion I had anticipated making for his disqualification. His announcement that he would not be trying the case and was unlikely to be ruling on subsequent discovery issues (Exhibit "W", p. 34, lns. 8-12) made such disqualification motion unnecessary.

to the preparation of the defendant's defense" from his description of Rule 16(a)(1)(C) in his opposition to my motion[8].

30. Nor could any objective reading of my October 30, 2003 motion permit any conclusion but that I had resoundingly established the "materiality" of ALL 22 requests for "documents and tangible objects" sought by my August 12, 2003 First Discovery Demand[9] – and that I was entitled to a finding to that effect by Judge Milliken, with production ordered for my inspection. Judge Milliken's patient explanations to Mr. Mendelsohn as to why he was going to have to search for my requested records was derived from the arguments as to their "relevance" set forth at pages 7-20 of my motion, thereby recognizing their "materiality" (Exhibit "W", p. 6, lns. 8-25; p. 8, lns. 10 - p. 10, lns. 25; p. 11, lns. 19-25; p. 15, ln. 9 - p. 17, ln. 3; p. 27, lns. 20 – p. 28, ln. 12). Nonetheless, Judge Milliken pretended that "issues of materiality" were yet to be determined, might not be resolved until

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[8] Judge Milliken did not challenge Mr. Mendelsohn's pretense that he was "not aware of the glaring omission" (Exhibit "W", p. 4, lns. 23-24), notwithstanding the showing at ¶¶12-14 of my December 3, 2003 reply affidavit, which I had faxed and e-mailed to Mr. Mendelsohn with a transmitting coverletter just after midnight on December 3rd (Exhibit "V-2"). As I recollect, I provided Judge Milliken with a copy of this transmitting coverletter, along with the fax and e-mail receipts, when I delivered the "hard copy" of my reply affidavit to his chambers. This, so that he would have "proof of service".

Judge Milliken never asked Mr. Mendelsohn whether he had read my reply affidavit prior to the oral argument – and Mr. Mendelsohn did not volunteer that information. Rather, Mr. Mendelsohn's sole reference to it was to request "time to respond to Ms. Sassower's motion that was filed with the Court today" (Exhibit "W", p. 19, lns. 16-18). Although Judge Milliken generously gave him until "the end of December" – in other words, four full weeks – Mr. Mendelsohn filed no response – thereby conceding, *as a matter of law*, the truth of my reply affidavit's demonstration of his on-going deliberate misconduct and the Court's obligations with respect thereto pursuant to its "Disciplinary Responsibilities" under Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts.

[9] My August 12, 2003 First Discovery Demand is Exhibit "A" to my October 30, 2003 discovery/disclosure/sanctions motion.

right before trial, "really on the eve of selection of the jury", possibly at a "further hearing" (p. 5, lns. 6-7; p. 17, lns. 4-6; p. 18, lns. 7-17; p. 36, lns. 3-8), and that "some judge" might then deny me my sought-after documents on grounds of "materiality" (p. 36, lns. 20-22). This, in addition to feigning that I was going to have to "roll up [my] sleeves" (p. 24, ln. 1) and "going to need to articulate a lot on this materiality prong" (p. 24, ln. 23) and had to "demonstrate the materiality of one point or another." (p. 25, lns. 3-4).

31. As to Judge Milliken's direction to Mr. Mendelsohn that he make his production for *in camera* inspection, any fair and impartial tribunal would immediately recognize this as improper.

32. Rule 16(d)(1) provides for "Regulation of discovery" as follows:

> "Protective and modifying orders. Upon a sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the Court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone..."

33. Mr. Mendelsohn made NO "showing", let alone a "sufficient showing" -- and NO "motion" that his "showing" be "inspected by the judge alone". In fact, Mr. Mendelsohn did not even ask for *in camera* inspection of anything, although, as Judge Milliken recognized, it was his responsibility to ask:

> "You have the protection of asking that those materials be delivered to the Court for in camera inspection and reviewed to see to any healthy redaction." (Exhibit "W", p. 9, lns. 18-20).

Instead, Judge Milliken simply took it upon himself to announce:

> "So that's my charge on reading the papers to the Government, all right? Talk to the Capitol Police. See what records they maintain on her, see what communications they got about her in this instance, and get any history of complaints of police misconduct [by] this defendant for potential bias cross-examination. And I order that produced for in-camera inspection in chambers..." (Exhibit "W", p. 11, lns. 19-25).

34. Clear to any fair and impartial tribunal was that Judge Milliken's order for *in camera* inspection was not only *sua sponte* – and thereby violative of my rights – but, additionally, that it was overbroad. Only 6 of my 22 requests for "documents and tangible objects" in my August 12, 2003 First Discovery Demand had been the subject of confidentiality objections by Mr. Mendelsohn's October 3, 2003 response – and this, based on alleged "USCP privacy guidelines" whose inadequacy was demonstrated by pages 24-27 of my motion. Consequently, there was no basis for Judge Milliken to bar me from inspection of Mr. Mendelsohn's production as to the 16 other requests. Certainly, as to the issue of "relevance" – objected to 13 times in Mr. Mendelsohn's October 3, 2003 response – there was no necessity for Judge Milliken to order *in camera* inspection of Mr. Mendelsohn's production. Determination of "relevance" and "materiality" rests on evaluation of the uncontested arguments and evidentiary proof presented by pages 7-20 of my October 30, 2003 motion – and no "short-stopping" inspection of documents by the Court is appropriate once such determination is made.

The Court's Disregard of, and Complicity in, Assistant U.S. Attorney Aaron Mendelsohn's Wilful Violation of my Due Process Right to Notice and Opportunity to be Heard as to the Sufficiency of his "*Ex Parte In Camera*" Submission

35. My communications with the Court, beginning with my innocent, non-substantive January 21st phone call to chambers, could only have sharpened its knowledge that my rights were being seriously violated with respect to my October 30, 2003 motion. Although Judge Milliken did not specify what I would be receiving in connection with Mr. Mendelsohn's *in camera* submission to the Court on January 14, 2004, any fair and impartial tribunal would deem it obvious that if Mr. Mendelsohn were going to be complying with Judge Milliken's directive, he would have to accompany his *in camera* production with a coverletter correlating the "documents and tangible objects" he was producing to the 22 itemized requests in my First Discovery Demand. Such coverletter would be comparable to his initial October 3, 2003 coverletter accompanying his production – the same as is Exhibit "B" to my October 30, 2003 motion.

36. My February 10, 2004 letter to the Court (Exhibit "T-3") enclosed a copy of my unresponded-to February 4, 2004 letter to Mr. Mendelsohn, addressed to this subject:

My February 4, 2004 letter **(Exhibit "T-3")**

"Dear Mr. Mendelsohn:

I hereby request that you identify the content of the completely '*ex parte in camera*' submission you made to the Court in response to Judge Milliken's January 14, 2004 deadline – as to

which you did not see fit to even provide me with a copy of your transmitting coverletter.

Unless a coverletter identifying the transmitted documents did not accompany your submission, please furnish me with a copy without delay.

It is my position that whether as a coverletter or otherwise, compliance with Judge Milliken's directive on December 3, 2003 required you to provide a superseding response to the 22 requests for 'documents and tangible objects', enumerated by my August 12, 2003 First Discovery Demand. Further, as to records requested by items #5-10, 12, 16, 17, 22 of my Discovery Demand – which, *without elaboration*, your previous October 3, 2003 response claimed did 'not exist'[fn.1] -- you were required to identify whether, upon completing the search Judge Milliken directed, such records as you were continuing to purport did 'not exist' had been destroyed. As to this issue, Judge Milliken expressly recognized:

> 'The judge is obliged to look into the destruction of discoverable material and then assess its impact under pertinent authorities.' (p. 38, lns. 15-17)

I await your expeditious response.

Thank you."

37. For the Court to take no action, both by not itself identifying to me what Mr. Mendelsohn had submitted *ex parte* AND by not directing Mr. Mendelsohn to respond to my February 4th letter (Exhibit "T-3"),

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fn.1 "*See* my October 30, 2003 motion to enforce my discovery rights and the prosecution's disclosure obligations, pp. 20-24."

reflects an unconscionable disregard for my most fundamental due process right to notice and opportunity to be heard with respect to the sufficiency of Mr. Mendelson's "*ex parte in camera*" submission.

My Entitlement to Postponement/Continuance of the March 1, 2004 Trial Date, Chargeable to the Government or the Court, Pending Responsive, Written Adjudication of my Still-Outstanding October 30, 2003 Discovery/Disclosure/Sanctions Motion

38. At the December 3rd oral argument, Judge Milliken ruled that I had "a 16(D)(2) remedy of Court ordered discovery. That's what has to happen..." (Exhibit "W", p. 10, lns. 1-2), stating further,

> "I do rule that the remedy is Court ordered discovery...look at our local criminal Rule 16(D)(2). You'll see that the very first recommended sanctions are discovery and continuance to allow for lawful discovery and with a recast of the obligation on the Government, that's the road I send you down." (p. 30, lns. 5-11).

39. For this reason, Judge Milliken replaced the January 14, 2004 date that Judge Wertheim had scheduled for the trial – and made it the date by which Mr. Mendelsohn was to turn over for the Court's inspection the "documents and tangible objects" sought by my First Discovery Demand. (Exhibit "W", p. 12, lns. 5-6; 12-13). He then stated,

> "If there is a determination to disclose, it'll go to the defendant early in February if not late January and I'll give notice to the Government after that which is disclosed." (p. 13, lns. 4-8).

40. It is now already the last week in February, with no word whatever from the Court as to its "determination to disclose" any of Mr. Mendelsohn's "*ex parte in camera*" production of "documents and tangibles".

41. Based on my October 30, 2003 motion – and, in particular, pages 7-20, which I expressly identified at the December 3rd oral argument as establishing "materiality" (Exhibit "W", p. 26, lns. 6-15) and whose review Judge Milliken thereafter acknowledged as appropriate for this Court (p. 36, lns. 1-8) -- a fair and impartial tribunal would have promptly made a "determination to disclose" most, if not all, of the "documents and tangible objects" sought by my First Discovery Demand – assuming Mr. Mendelsohn had produced them for *in camera* inspection.

42. As Judge Milliken did not identify any item among my 22 requests for "documents and tangible objects" that Mr. Mendelsohn was relieved of complying with, his production was required as to all 22 such requests. Indeed, Judge Milliken recognized that the Court must evaluate not only what is to be disclosed, but whether Mr. Mendelsohn "has produced in camera what's required" (Exhibit "W", p. 36, lns. 1-3) and, further, to the extent he claims that records do not exist, must state whether it is because they have been destroyed because "[t]he judge is obliged to look into the destruction of discoverable material and then assess its impact under pertinent authorities" (p. 38, lns. 15-17).

43. Rule 16 (a)(1)(C) entitles me to rulings on my requested "documents and tangible objects" – including a ruling as to whether Mr. Mendelsohn produced them for *in camera* inspection and, if not, why not. Such is NOT merely for purposes of my "defense", as for instance, at trial, but for "the preparation of [my] defense". This has not been afforded, with the result that my trial preparations, including issuance of subpoenas to

witnesses pertaining to the events embraced by these records, have been impeded.

44. Pursuant to Rule 16(d)(2), postponement/continuance of the scheduled March 1, 2004 trial date must be ordered. Such is properly chargeable to Mr. Mendelsohn, whose wilful failure to furnish me with any information as to what he transmitted to the Court for *in camera* inspection is inexcusable and, which, from the title description given me by Mr. Cipullo – as recited by my January 30th letter (Exhibit "T-2", p. 2) -- is patently non-compliant with Judge Milliken's directive.

45. Such postponement/continuance would restore my legitimate rights, trampled upon by this biased Court in depriving me of notice and opportunity to be heard as to the sufficiency of Mr. Mendelsohn's *in camera* transmittal and in failing to make the substantive adjudications called for by Judge Milliken -- and compelled by my October 30, 2003 motion.

46. The serious and substantial issues documented by my October 30, 2003 motion, not only as to my discovery rights and the Government's disclosure obligations, but as to the Government's knowledge that it had NO basis in fact or law to prosecute and maintain this criminal case against me for "disruption of Congress", require judicial adjudication that is responsive and written. No trial date is properly set until a reasoned adjudication is rendered by a fair and impartial tribunal, addressed to the clearly dispositive, evidentiarily-established facts in the record and the law pertaining thereto. This includes adjudication with respect to my uncontested sworn statement, obscured by Judge Milliken (Exhibit "W", p. 15, lns. 11-15), that the videotape of the Senate Judiciary Committee's May 22, 2003 "hearing" does NOT support the underlying prosecution documents and, specifically, does NOT

support the recitation of "events and acts" in the amended "Gerstein"[10].

WHEREFORE, it is respectfully prayed that the relief requested in the accompanying notice of motion be granted.

_____s/_____
ELENA RUTH SASSOWER

Sworn to before me this
23rd day of February 2004

_____s/_____
Notary Public

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[10] *See, inter alia*, my affidavit in support of my October 30, 2003 motion (¶¶17-18, 29) and my December 31, 2003 affidavit in opposition to the prosecution's motion *in limine* (¶¶11-19).

[Appellant's Appendix: 375-403]

Petitioner's March 22, 2004 pre-trial motion to disqualify D.C. Superior Court Judge Brian Holeman, removal/transfer, stay of trial, etc.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA / CRIMINAL DIVISION

———————————————— x

UNITED STATES OF AMERICA

No. M-04113-03

-against-

ELENA RUTH SASSOWER

———————————————— x

Notice of Motion to Vacate Orders of Judge Brian F. Holeman for Violation of D.C. Superior Court Civil Procedure Rule 63-I pertaining to "Bias or Prejudice" & for Removal/Transfer of this Case to the U.S. District Court for the District of Columbia Pursuant to D.C. Code §10-503.18

———————————————

PLEASE TAKE NOTICE that upon the annexed affidavit of defendant *pro se* ELENA RUTH SASSOWER, sworn to March 22, 2004, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, ELENA RUTH SASSOWER will move this Court at 500 Indiana Avenue, N.W., Washington, D.C. 20001 as soon as can be heard, for an order:

(1) Vacating all Orders of Judge Brian F. Holeman as violative of D.C. Superior Court Civil Procedure Rule 63-I pertaining to "Bias or prejudice of a judge", made applicable to criminal cases by D.C. Superior Court Criminal Procedure Rule 57(a);

(2) Removing/transferring this case to the United States District Court for the District of Columbia

pursuant to D.C. Code §10-503.18;

(3) Such other and further relief as may be just and proper, including, if the foregoing relief is denied: (a) reargument and renewal of the Court's challenged Orders, and upon granting of same, recall and/or vacatur thereof: and (b) a stay of the trial herein to permit defendant to bring a writ of mandamus/prohibition to the District of Columbia Court of Appeals and/or file a petition of removal to the United States District Court for the District of Columbia.

Dated: March 22, 2004
White Plains, New York

s/

ELENA RUTH SASSOWER
Defendant *Pro Se*
16 Lake Street, Apt. 2C
White Plains, New York 10603
(914) 949-2169

TO: U.S. Attorney for the District of Columbia
Assistant U.S. Attorney Jessie K. Liu
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7700

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

---------- x

UNITED STATES OF AMERICA

No. M-04113-03

-against-

ELENA RUTH SASSOWER

---------- x

Affidavit in Support of Motion to Vacate Orders of Judge Brian F. Holeman for Violation of D.C. Superior Court Civil Procedure Rule 63-I pertaining to "Bias or Prejudice" & for Removal/Transfer of this Case to the U.S. District Court for the District of Columbia Pursuant to D.C. Code §10-503.18

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the above-named defendant, acting *pro se*, criminally charged with "disruption of Congress" and facing punishment of six months in jail and a $500 fine.

2. This affidavit is submitted in support of the relief set forth in the accompanying notice of motion.

3. The facts herein particularized further establish this Court's ACTUAL BIAS, reinforcing those which were the basis for my fact-specific, document-supported February 23, 2004 motion for its disqualification, pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts. Together, they satisfy the "pervasive bias" and "impossibility of fair judgment" standard articulated by the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540, at 551, 555, 556, 565 (1994), entitling me to the

Court's recusal, including pursuant to "Superior Court Civil Rule 63-I made applicable to this case by the counterpart Criminal Procedure Rule 57(a)."[1] That the proof of this Court's dishonesty and lawlessness is known to those charged with supervisory responsibilities at the Superior Court of the District of Columbia – who have chosen to take no corrective steps – only underscores the necessity that this case be removed or transferred to the United States District Court for the District of Columbia – relief available to me pursuant to D.C. Code §10-503.18.

4. For the convenience of the Court, a Table of Contents follows:

Table of Contents

Additional Facts Establishing the "Pervasive Bias" and "Impossibility of Fair Judgment" Standard for the Court's Disqualification -- Beyond Those Particularized by my February 23, 2004 Affidavit .....[A-135]

The Court's Orders Must Be Vacated as Violative of Superior Court Civil Procedure Rule 63-I.....[A-157]

D.C. Code §10-503.18 Entitles me to Removal/Transfer of this Case to the United States District Court for the District of Columbia – and the Record Herein Establishes the Necessity of Such Relief .....[A-161]

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[1] Senior Judge Stephen Eilperin's September 3, 2003 Memorandum and Order (Exhibit "LL", p. 2).

Additional Facts Establishing the "Pervasive Bias" and "Impossibility of Fair Judgment" Standard for the Court's Disqualification – Beyond Those Particularized by my February 23, 2004 Affidavit

5. Shortly before 7:30 p.m., on Wednesday, February 25th, 20 pages were faxed to me by the Court. These consisted of

(a) A February 25, 2004 Order denying the first branch of my February 23rd motion for the Court's disqualification – based on a conclusory claim that I had "established no facts that the trial judge's impartiality might reasonably be questioned" (Exhibit "AA-1")[2];

(b) A February 25, 2004 Order denying the second branch of my February 23rd motion for a continuance of the March 1, 2004 trial date – based on a conclusory claim that I had "failed to establish that a continuance of the trial date is necessary to prevent manifest injustice" (Exhibit "AA-2");

(c) A February 25, 2004 Order denying my request for change of venue contained in the third branch of my February 23rd motion – based on the conclusory assertion that Judge Abrecht's September 4, 2003 Memorandum Explaining Denial of Motion for Change of Venue[3] established

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2 The double-lettered exhibits annexed hereto begin a new sequence. The "A"-"Z" single-lettered exhibit sequence began with my October 30th motion ["A"-"O"], continued with my December 3rd reply affidavit ["P"-"R"] and my December 31st affidavit in opposition to the prosecution's motion *in limine* ["S"], and concluded with my February 23rd motion ["T"- "Z"].

3 Judge Abrecht's Memorandum itself bears no date (Exhibit "MM").

"the law of this case as to venue", followed by a conclusory claim that there had been "no demonstration of newly presented facts or a change in substantive law" (Exhibit "AA-3");

(d) A February 25, 2004 Order granting the prosecution's December 3, 2003 motion *in limine* – without any reason therefor (Exhibit "AA-4");

(e) A February 25, 2004 Order releasing to me the prosecution's "*Ex Parte In Camera* Submission Regarding Evidence Relevant to Bias Cross-Examination of Government Witnesses, filed with the Clerk of the Court on January 18, 2004" – based on the Court's review thereof and "the record of the proceedings of December 3, 2003" (Exhibit "AA-5").

6. My response to these February 25th Orders, which, excepting the last, were without basis in fact and law, was to contact appropriate supervisory authorities at the Superior Court of the District of Columbia. I did this first thing the following day, Thursday, February 26th, leaving phone messages for Chief Judge of the Superior Court Rufus King III and for Presiding Judge of its Criminal Division Noel Anketell Kramer at their Chambers and for Dan Cipullo, Director of the Criminal Division, at his office. I then followed this up with a February 26th memorandum, addressed and faxed to each of them later that day (Exhibit "BB"). Entitled "REQUEST FOR IMMEDIATE SUPERVISORY OVERSIGHT OVER JUDGE BRIAN F. HOLEMAN", it read as follows:

"This follows up my phone calls to your chambers/offices, first thing this morning: 9 a.m. – 9:15 a.m., requesting your immediate supervisory oversight over Judge Brian Holeman. In violation of my legitimate discovery rights under Rule 16(a)(1)(C), Judge Holeman is

attempting to railroad me to trial this Monday, March 1, 2004. This, to 'protect' influential members of the U.S. Senate, Senate Judiciary Committee, and U.S. Capitol Police, whose misconduct underlies the Government's initiation and prosecution of a legally and factually baseless charge against me for 'disruption of Congress'.

I have ALREADY moved for Judge Holeman's disqualification for ACTUAL BIAS. This was the first branch of my February 23, 2004 motion, whose second branch was for postponement/continuance of the March 1, 2004 trial date, pursuant to Rule 16(d)(2), and whose third branch, for 'other and further relief as may be just and proper', specified same to include:

> 'ensuring the appearance and actuality of fair and impartial justice by transferring this politically-explosive case to a court outside the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President, with the advice and consent of the Senate or one of its committees.'

In three separate orders faxed to me yesterday evening, Judge Holeman denied each of my motion's three branches. NONE of these three orders even identifies, let alone addresses, ANY of the substantiating facts detailed by my motion as entitling me to the relief sought – and the reason is obvious. Judge Holeman could not do so and maintain his bald pretenses that I had 'established no facts that [his] impartiality might reasonably be questioned'; 'failed to establish that a continuance of the trial date is necessary to prevent manifest injustice', made 'no

demonstration of newly presented facts' to warrant transfer. Such conclusory claims are outright judicial lies.

Similarly insupportable is Judge Holeman's further order, also faxed to me yesterday evening, granting the Government's December 3, 2003 motion *in limine* to preclude reference to 'political motivations, political beliefs, political causes, etc.'. Such granting is without identifying ANY basis for relief demonstrated by my December 31, 2003 opposing affidavit to be factually and legally insupportable.

A fifth order was also faxed by Judge Holeman yesterday evening. This ordered the release of 'the entirety of the Government's *Ex Parte In Camera* Submission' – which it simultaneously accomplished by 'attach[ing]' such submission. In so doing, Judge Holeman conspicuously did not identify, let alone adjudicate, ANY of my objections with respect to such submission, particularized by my February 23, 2004 motion. This includes my objection as to its sufficiency[fn.1] – as to which I gave detailed argument as to why I believed it to be non-compliant with Judge Milliken's directive to the Government at the December 3, 2003 oral argument of my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. As Judge Holeman may be presumed to have immediately recognized from my February 23, 2004 motion, the Government's *ex parte in camera* submission is flagrantly non-compliant with Judge Milliken's directive – entitling me to the requested continuance/postponement of the March 1, 2004

[fn.1] '*See, inter alia*, my January 30, 2004 and February 10, 2004 letters to Judge Holeman (Exhibits "T-2", "T-3"), ¶¶35-36, 42-45.'

trial date on that basis alone.

The language of Rule 16(a)(1)(C), invoked by my August 12, 2003 First Discovery Demand, is explicit: 'documents and tangible objects...material to the preparation of the defendant's defense' (underlining added). Yet, as ¶30 of my February 23, 2004 motion detailed, Judge Milliken made NO adjudication of the 'materiality' of the 22 requests for 'documents and tangible objects' in my August 12, 2003 First Discovery Demand, while nonetheless directing the Government's production for *in camera* inspection. Pursuant to Rule 16(a)(1)(C), I am entitled to such adjudication of 'materiality', to production based thereon, and to rulings as to whether records claimed by the Government not to exist have been destroyed -- and this sufficiently in advance of trial so that I might properly prepare my defense. As stated by my February 23, 2004 motion (¶43) – and prior thereto in my February 10, 2004 letter to Judge Holeman (Exhibit "T-3", p. 2) to which he did not respond -- my right to subpoena witnesses whose testimony relates to these 'documents and tangible objects' rests on such adjudications, not yet rendered.

Please IMMEDIATELY review the file of this case – starting with my February 23, 2004 motion – in discharge of your supervisory and disciplinary responsibilities, including pursuant to Canon 3D(1) of the Code of Judicial Conduct for the District of Columbia Courts. Such is essential to safeguarding the integrity and resources of the Superior Court from a judge who has so brazenly abandoned ALL adjudicative standards, beginning with honesty.

Thank you." (Exhibit "BB", all emphases in the

original).

7. The Court was an indicated recipient of this February 26th memorandum – and I faxed it a copy under a transmitting coversheet (Exhibit "CC"). It was in face of this memorandum that shortly before 7:00 p.m. on February 26th, the Court faxed me yet a further Order. Dated February 26th, this Order purported to resolve all issues with respect to my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. It did this by a bald assertion that the "law of the case" with respect to my October 30, 2003 motion had been established by Judge Milliken's December 3, 2003 from-the-bench rulings, that the prosecution's "sole outstanding discovery obligation" had been "satisfied" by its January 14, 2004 "*ex parte in camera* submission", and by baldly claiming that there had been "no demonstration of newly presented facts or a change in substantive law" by my February 23, 2004 motion (Exhibit "DD").

8. My response to this February 26th Order – as well as to a phone conversation had with Mr. Cipullo a few hours before receiving such February 26th Order -- was a February 27th memorandum, entitled, like the previous memorandum, "REQUEST FOR IMMEDIATE SUPERVISORY OVERSIGHT OVER JUDGE BRIAN F. HOLEMAN". Addressed and faxed to Chief Judge King, as well as to Judge Harold Cushenberry, who, according to Mr. Cipullo, was Acting Presiding Judge of the Criminal Division in the absence of Presiding Judge Kramer, this February 27th memorandum stated as follows:

> "Dan Cipullo telephoned me late yesterday afternoon. He had received my memorandum requesting immediate supervisory oversight over Judge Holeman, but stated that notwithstanding he is Director of the Superior Court's Criminal Division, he has no oversight responsibilities over

its judges, whose 'prerogative' to do whatever they choose in cases before them, no matter how lawless and factually unfounded, is, according to him, unfettered except for the appellate process. Consequently, he stated he would not review the court file of the criminal case against me so as to *independently* verify that Judge Holeman has 'brazenly abandoned all adjudicative standards, beginning with honesty'.

Although Mr. Cipullo – a lawyer -- initially represented that the same applies to each of you, he subsequently agreed that it was for you to make your own representations as to your oversight responsibilities over Judge Holeman. This, after I told him that irrespective of the outcome of my criminal trial, I was intending to file a judicial misconduct complaint against Judge Holeman with the District of Columbia Commission on Judicial Disabilities and Tenure. The only question was whether such judicial misconduct complaint would also be against yourselves for failing to discharge your supervisory and disciplinary duties, including pursuant to the Code of Judicial Conduct for the District of Columbia Courts. This would include, in addition to Canon 3D(1), 'Disciplinary Responsibilities'[fn.2], cited by my yesterday's memorandum, Canon 3C(3), 'Administrative Responsibilities' [fn.3].

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fn.2 "A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority."

fn.3 "A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and

Please be advised that early yesterday evening, Judge Holeman faxed me a sixth order. Such reinforces the necessity of your immediate supervisory intervention, as Judge Holeman's flagrant dishonesty continues unabated – even in face of my yesterday's memorandum for your supervisory oversight, a copy of which I sent him hours earlier.

As with Judge Holeman's first three orders which, without identifying ANY of the facts presented by my February 23, 2004 motion, separately denied each of its three branches by bald pretenses described by my memorandum as 'outright judicial lies', so too this sixth order, arising from the same February 23, 2004 motion.

By this sixth order, Judge Holeman attempts to create a 'written adjudication' of my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. He does this NOT by adjudicating my entitlement to a 'responsive, written adjudication' to that dispositive motion -- the express basis upon which the second branch of my February 23, 2004 motion sought postponement/continuance of the March 1, 2004 trial date – nor by confronting, or even identifying, my assertion of Judge Milliken's bias, let alone the extensive evidence I presented as to

> 'the mishmash of ambiguous, contradictory, insufficient, and factually unsupported rulings and statements that a demonstrably biased Judge Milliken made

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the proper performance of their other judicial responsibilities."

> from the bench with respect to my October 30, 2003 [illegible]over/disclosure/sanctions motion' (¶27),

set forth at ¶¶28-34 under a section heading entitled:

> 'The Biased Adjudications of Senior Judge Milliken at the December 3, 2003 Oral Argument – Obvious to Any Fair and Impartial Tribunal'.

Rather, Judge Holeman simply asserts,

> 'At a hearing held on December 3, 2003, Judge Milliken ruled on this Motion, thereby establishing the law of this case with respect to all outstanding discovery obligations on the part of the Government. Judge Milliken determined that the sole discovery obligation of the Government was the *ex parte in camera* submission of documents relevant to bias cross-examination, which was satisfied by way of the Government's submission of responsive documents for this Court's review on January 14, 2004.
>
> Further, Judge Milliken ruled there would be no imposition of sanctions against the Government for failure to comply with discovery obligations.'

With this, Judge Holeman denies the motion[fn.4], falsely purporting there was 'no demonstration of newly presented facts'.

Be advised that Judge Holeman's above-quoted

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fn.4 'Judge Holeman not only claims to have 'consider[ed]' the motion, but 'any opposition thereto'. To my knowledge, NO opposition was filed by the Government.'

pivotal assertion that:

> 'Judge Milliken determined that the sole discovery obligation of the Government was the *ex parte in camera* submission of documents relevant to bias cross-examination, which was satisfied by way of the Government's submission of responsive documents for this Court's review on January 14, 2004'

is yet a further 'outright judicial lie'. Such is readily exposed by the transcript of the December 3, 2003 oral argument, annexed to my February 23, 2004 motion. This quite apart from ¶¶35-36, 42-25 of the motion, cited by my yesterday's memorandum in support of my statement:

> 'As Judge Holeman may be presumed to have immediately recognized from my February 23, 2004 motion, the Government's *ex parte in camera* submission is flagrantly non-compliant with Judge Milliken's directive – entitling me to the requested continuance/postponement of the March 1, 2004 trial date on that basis alone.' (at p. 2, underlining in the original).

Assuming you have not yet accessed the file, I will highlight some lengthy excerpts from the December 3, 2003 transcript – which Judge Holeman would have had to be 'blind as a bat' to miss:

> [Transcript, p. 10, ln. 11 – p. 11, ln. 5, bold added]
>
> Judge Milliken: So if, for example, she is a

representative of an organization that's about cleaning up the judiciary, she wants to fight to prevent a second circuit appointment and she wants to be heard and there is a public hearing organized to that effect, and hearings regularly allow for people to speak and she wants to get up and say, well, I was there to speak and lo and behold, here I am pounced on. I was just starting to speak. I didn't even hear the speaker call for quiet. I didn't hear anything. I was just trying to discharge my citizenly opportunity to petition the Government for redress of grievances and so, **if there are communications whether from offices represented in Congress to police or, you know, target this woman, intercept her, arrest her, she gets to have that specific to these circumstances**. And you have to ask for that specific to these circumstances and you have to review it specific to these circumstances and you have to, under the Akers case, which I know you've read 100 times, resolve all bouts [sic] in favor of discovery. That was the Supreme Court's command...'

[Transcript, p. 15, ln. 16- p. 17, ln. 3, bold added]

Judge Milliken: 'So, you have to at least inquire. You know, did somebody say, look, I'm a Senator and that person is not coming to my hearing and tell the police, I don't care how you do it, get rid of her. All right? And, as an example, I mean, she's going to make a claim that she didn't do anything wrong, and that, in fact, the charge is manufactured and, in fact, the charge is so

thin, let me see if I can find it. Have you got your Gerstein handy?...
When you read it, it's an amended Gerstein. After the Senator called for order, the defendant continued to shout. It wouldn't take long for a person, it certainly didn't take me but a second to think, ahh, there. Based on what was originally reported by the officers, they didn't have probable cause to arrest her. When they talked to a prosecutor, their representations were amended. Now they've built sufficient prosecution. So clearly I'm right that I was arrested for nefarious motives and reasons. And now I'm being pressed because prosecutors are supporting the police authorities and I really never did anything wrong in the first place. And if I have access to documents to show that they were out to get me before I even step on the Capitol grounds, that proves that they were going to get me removed, incarcerated at all costs because they want to suppress me and I live in a police state. This is fascism, this is not America and she gets to do all that, all right? That's her defense or it could be. I'm not saying it is because she doesn't have to settle on one but it could be and one hard to think about. So you have to see, was there some, we are going to get her kind of communication. **And if it's true, she's entitled to have you deliver that to me.**'

[Transcript, p. 27, ln. 20- p. 28, ln. 18, bold added]

Judge Milliken: 'And he needs to go back and to review the records of how you may

> have been targeted, and I use that broadly. I'm not saying it happened, I don't know whether it happened. If it happened, if somehow you were singled out so that you were not going to get an open door reception at the seat of your Government, he's going to find that out and **he's going to deliver those papers to the Court.**'
>
> Ms. Sassower: 'As that [39-page May 21, 2003 fax to Capitol Police Detective Zimmerman] makes plain and as my [October 31, 2003] moving affidavit presents, U.S. Capitol Police called me the day before the arrest at the instance of Senator Hillary Rodham Clinton and she set in motion the chain of events that led to my being threatened.'
>
> Judge Milliken: 'Bingo. In the event when he inquires of that staff as I have ordered that he do, he finds that there were directions from Senatorial offices or through staff to law enforcement, **he's going to produce those to the Court.**' ... '**He's going to look and provide the raw material to the Court**'.

Yet, the ONLY 'raw material' which the Government filed with the Court *ex parte* in purported compliance with Judge Milliken's January 14, 2004 deadline were Capitol Police records of my June 25, 1996 arrest for 'disorderly conduct' in the hallway outside the Senate Judiciary Committee, *to wit*, the Arrest/Prosecution Report; Supplement Report; my signed waiver of rights, and Citation Release Determination Report. Conspicuously, the Government did NOT correlate this production to ANY of the 22 requests for 'documents and

tangible objects' in my August 12, 2003 First Discovery Demand. Indeed, NONE of my 22 requests sought any such production, except perhaps inferentially #22.

For Judge Holeman to thus purport that 'responsive documents' were filed by the Government and that Judge Milliken's directive was 'satisfied' is to flagrantly lie so as to 'protect' the Government and railroad me to trial on Monday, March 1, 2004, without the documents to which I am entitled – and the witnesses whose testimony will relate thereto[fn.5]. Such cannot be permitted by supervisory authorities, given the fact-specific, *readily-verifiable* notice herein and by my yesterday's memorandum of what is taking place.

Thank you." (Exhibit "EE", all emphases in the original).

9. As with the previous memorandum, the Court was an indicated recipient of this February 27th memorandum – which I faxed it under a transmitting coverletter sent at 1:05 p.m. (Exhibit "FF-1"). Such coverletter, additionally, gave the Court notice that:

"Assistant U.S. Attorney Mendelsohn has consented to postponement/continuance of the Monday, March 1, 2004 trial date, necessitated by the hospitalization of my father, George Sassower, since Wednesday evening and the angiogram/angioplasty and possibly other heart surgery being performed on him today.

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fn.5 'Judge Holeman is presumed to have further recognized that the extraordinary *ex parte* 3-1/3 page statement generated by the Government to accompany its paltry, non-responsive *in camera* submission only further reinforces my entitlement to the documents sought by my August 12, 2003 First Discovery Demand and to related witnesses.'

I will write to the Court more fully later this afternoon on this subject."

10. At 3:45 p.m. that afternoon, Friday, February 27th, I faxed the Court a letter as to the particulars (Exhibit "FF-2"). Bearing a RE clause "POSTPONEMENT/CONTINUANCE OF MARCH 1, 2004 TRIAL DATE", I stated:

"I do not proceed by motion because irrespective of whether such is granted by the Court, it is not my intention to leave the New York area while my father is in such critical condition as to require hospitalization. Besides, it is already quite apparent that the Court has NO RESPECT for such motions as I have painstakingly made.

Should the Court feel it appropriate to issue a warrant for my arrest based on my non-appearance caused by my father's hospitalization and potentially-risky invasive procedures, such will simply be further evidence of its actual bias, beyond what I have already demonstrated by my February 23, 2004 motion and my two memoranda for supervisory oversight." (Exhibit "FF-2", upper case in the original).

11. 3-1/2 hours later, at approximately 6:30 p.m., Friday, February 27th, the Court faxed an Order, granting my "request for a continuance of the trial date, there being no opposition by the Government and good cause having been shown" – and unilaterally setting a new trial date of Monday, April 5th (Exhibit "GG").

12. First thing Monday morning, March 1st, Mark Goldstone, Esq., my attorney advisor, advised the Court, as well as Assistant U.S. Attorney Jessie Liu, who had replaced Mr. Mendelsohn on this case, of what he had informed me immediately upon my notifying him of

the April 5th new trial date: that he had long-standing plans to be out of town from Friday, April 2nd to Sunday, April 11th and would, therefore, have to seek a continuance

13. Following his conversation with Ms. Liu, Mr. Goldstone told me that she had stated to him that the April 5th date was also not convenient for the prosecution, at least one of whose witnesses was also scheduled to be out-of-town at that time. He informed me that she was, therefore, agreeable to filing a joint motion for continuance. Although she would agree to a Monday, April 12th date, which initially had seemed convenient for Mr. Goldstone, she would not agree to such later dates as Monday, May 3rd and Monday, May 11th, upon Mr. Goldstone's advice to her that April 12th would not be feasible.

14. On March 9th, and without prejudice to my contention that the Court was disqualified for actual bias, Mr. Goldstone served a motion to change the trial date to Monday, May 3rd. After reciting the relevant facts and circumstances – including that Ms. Liu had not identified any prejudice to the Government by the granting of the continuance to May 3rd – a mere few weeks beyond the April 12th date to which she did earlier agree, he stated:

> "There is a further good and sufficient reason for putting the trial over to May 3rd, namely, to allow adequate time for motion practice with respect to the nine subpoenas served on defendant's behalf upon Senators Hatch, Leahy, Chambliss, Clinton, and Schumer – and, upon various members of Senator Clinton and Schumer's staff. The Office of Senate Legal Counsel, which on March 4th, advised that it was authorized to accept service of such subpoenas – and which did accept service on March 5th – has stated that it will be filing a Motion to Quash the subpoenas on constitutional separation of powers

grounds. It is unknown when such motion will be made – but plainly there must be adequate time for the *pro se* defendant to research the complicated constitutional law with respect to privilege immunity and the Speech and Debate Clause and, based thereon, to interpose opposing papers addressed to the specific facts of this case. Presumably, the Government will need time to respond thereto. As for the Court, which presumably has never addressed such a motion, it will likewise require time for its own studied analysis of the law – and for a decision tailored to the unique, perhaps unprecedented, facts of this case.

Needless to say, once the Court adjudicates defendants' entitlement to her subpoenaed witnesses, their availability will have to be confirmed. The Senate is in recess from April 12th through April 16th – and, upon information and belief, the subpoenaed Senators will not be in Washington. Such is yet another good and sufficient reason for scheduling this criminal trial to May 3rd when the Senate is in session, and the witnesses will be available." (Mr. Goldstone's motion, at p. 2)

15. Ms. Liu's opposition to the motion did not allege ANY prejudice by the granting of the continuance to May 3rd, nor deny that such date would enable sufficient time to resolve my right to the subpoenaed Senate witnesses. Nonetheless, the Court did NOT adjudicate the motion. Rather, shortly after 7:00 p.m. on Wednesday, March 17th, it faxed me an Order directing a "status hearing prior to trial" for Monday, March 22nd at 2:00 p.m. (Exhibit "HH").

16. This March 17th Order concealed pertinent facts, which I set forth in a March 18th letter to the Court, requesting clarification, including as to the issues to be

addressed at the "pretrial hearing" (Exhibit "II"). My March 18th letter read as follows:

> "Dear Judge Holeman:
>
> I hereby request clarification of the Court's March 17th Order, faxed shortly after 7:00 p.m. yesterday evening.
>
> The Order, which directs a 'status hearing' for Monday, March 22nd at 2:00 p.m., is preceded by a single prefatory sentence stating:
>
> > 'On March 16, 2004, all counsel and *pro se* parties were notified, by telephone, of the intention of this Court to set a status hearing prior to trial.'
>
> The relevant facts, *not* identified by the Order and for which clarification is hereby requested, are as follows:
>
> Late in the afternoon on Tuesday, March 16th, the Court's law clerk, Sara Pagani, telephoned Mark Goldstone, Esq., my attorney advisor, apprising him of the Court's intention to hold a 'pretrial hearing' at 2:00 p.m. on March 22nd, and inquiring whether he would be available. Upon his answer in the affirmative, Ms. Pagani asked Mr. Goldstone whether he would be willing to represent or stand-in for me. His response was that although he would be willing to do so, the decision was mine to make and that Ms. Pagani should telephone me directly.
>
> That is precisely what happened. Ms. Pagani called me and stated that she had just spoken to Mr. Goldstone and that he was willing to represent me at a 'pretrial hearing' which the Court was scheduling for 2:00 p.m. March 22nd –

if such were agreeable to me. Upon my ascertaining from Ms. Pagani the meaning of a 'pretrial hearing' – *to wit*, that it was a 'term of art' for a pretrial conference -- my response was immediate. Not only would I not confer upon Mr. Goldstone the right to appear on my behalf, but there was no reason for me to do so since I could conveniently appear on my own behalf *via* telephone hook-up.

I believe it was in this initial conversation that I requested to be permitted to appear by phone because when Ms. Pagani called me back ten minutes later (as I had asked because I had been tied up on another call), she told me, *without interrupting this second conversation to confer with you*, that you would not agree to my appearing by phone. I strenuously objected to having to be burdened with making an exhausting, time-consuming, and expensive 500-mile, $200 round-trip from White Plains, New York to Washington, D.C. for what could so easily be accomplished by utilizing the speakerphone capability with which the courtroom is outfitted. In that regard, I urged Ms. Pagani to bring to your attention that Senior Judge Mary Ellen Abrecht had permitted me to appear by phone for the August 20, 2003 court conference held before her. The transcript of that conference -- and the audiotape from which it was made[fn.1] – establish that the speakerphone arrangement was a successful one.

I stated to Ms. Pagani that if you were compelling me to physically appear for the March 22nd 'pretrial hearing', notwithstanding you were willing to dispense with my appearance if I

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fn.1 Such audiotapes are readily available for the Court's listening.'

agreed to have Mr. Goldstone represent me, such would be further evidence of your ACTUAL BIAS – already meticulously documented by my February 23rd motion for your disqualification and by my February 26th and February 27th memoranda to Chief Judge King, *et al.* for supervisory oversight of your conduct.

Ms. Pagani indicated that you would be issuing an Order with respect to your intended-March 22nd 'pretrial hearing'. I expressly requested that such identify whether you were compelling my physical appearance and denying my reasonable request to appear by phone. I told Ms. Pagani that upon receiving same, I would be renewing my requests to Chief Judge King, *et al.* for supervisory oversight.

Additionally, I told Ms. Pagani that although a 'pretrial hearing' is clearly appropriate, such is premature in light of Mr. Goldstone's March 9th motion presently pending before the Court to change the trial date to Monday, May 3rd. In that connection, I stated that the prosecution had not alleged any prejudice by the granting of Mr. Goldstone's continuance motion, nor confronted the outstanding issue of my right to my subpoenaed Senate witnesses, resolution of which awaits motion practice by Senate Legal Counsel, not yet commenced. Ms. Pagani's response – which makes no sense -- was that you wanted to hold a 'pretrial hearing' before ruling on Mr. Goldstone's motion for continuance.

Obvious from Mr. Goldstone's motion is that it would be far more sensible for a 'pretrial hearing' to be held after my right to subpoena Senators Hatch, Leahy, Chambliss, Clinton, Schumer, and staff members of Senators Clinton and Schumer has been addressed by motion practice and a

decision based thereon. As therein stated:

> '...The Office of Senate Legal Counsel, which on March 4th, advised that it was authorized to accept service of such subpoenas – and which did accept service on March 5th – has stated that it will be filing a Motion to Quash the subpoenas on constitutional separation of powers grounds. It is unknown when such motion will be made – but plainly there must be adequate time for the *pro se* defendant to research the complicated constitutional law with respect to privilege immunity and the Speech and Debate Clause and, based thereon, to interpose opposing papers addressed to the specific facts of this case. Presumably, the Government will need time to respond thereto. As for the Court, which presumably has never addressed such a motion, it will likewise require time for its own studied analysis of the law – and for a decision tailored to the unique, perhaps unprecedented, facts of this case.
>
> Needless to say, once the Court adjudicates defendants' entitlement to her subpoenaed witnesses, their availability will have to be confirmed...' (Mr. Goldstone's motion, at p. 2)

So that I may be guided accordingly, please clarify the issues to be addressed at the March 22nd 'pretrial hearing' – and whether, by your March 17th Order, you are compelling me to physically appear and denying my request to appear by telephone, notwithstanding your willingness to dispense with my appearance altogether if I relinquish my valuable *pro se* rights to Mr. Goldstone.

Thank you." (Exhibit "II").

17. A copy of this letter was also faxed to Chief Judge Rufus King and to Criminal Division Presiding Judge Kramer and Criminal Division Acting Presiding Judge Cushenberry. My transmitting memo to them, entitled "REQUEST FOR IMMEDIATE SUPERVISORY OVERSIGHT OVER JUDGE BRIAN F. HOLEMAN (Exhibit "JJ"), stated as follows:

> "I have received no response from you to my identically-entitled two memoranda, dated February 26th and February 27th – copies of which are enclosed for your convenience[fn.1].
>
> Please advise as to the status of your supervisory investigation of Judge Holeman's demonstrably dishonest and violative conduct – and whether I might meet with you or appropriate members of your staff on Monday, March 22nd, in the event Judge Holeman requires my physical appearance at the 'pretrial hearing' he has scheduled for 2:00 p.m. on that date.
>
> As you are indicated recipients of my today's letter to Judge Holeman regarding that 'pretrial hearing', a copy is herewith enclosed.
>
> Thank you."

18. A copy of this March 18th memo was also sent to the Court, as well as to Criminal Division Director Dan Cipullo – both indicated recipients (Exhibit "JJ").

19. It is now past midnight on March 22nd. I received NO response from the Court as to the issues to be addressed at the "pretrial hearing", nor confirmation of

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fn.1 'The enclosed memoranda supersede the original, correcting typographic errors and making slight non-substantive changes.'

the fact that it has denied my request to appear *via* phone. Under such circumstances – and in order to safeguard my rights -- I have no choice but to leave my home at 6:30 a.m. this morning to travel by car to Manhattan so as to catch an 8:10 a.m. train from Penn Station to Washington, D.C. for the 2:00 p.m. "hearing".

The Court's Orders Must Be Vacated as Violative of Superior Court Civil Procedure Rule 63-I

20. In denying my February 23, 2004 motion for its disqualification on the bald claim that I had "established no facts that the trial judge's impartiality might reasonably be questioned" (Exhibit "AA-1") – in face of a litany of such facts documentarily established by my motion -- the Court was parroting the language of Canon 3E(1) of the Code of Conduct for the District of Columbia Courts, requiring that a judge disqualify himself "in a proceeding in which the judge's impartiality might reasonably be questioned". Ignored by the Court was the more relevant language of subsection (a) of Canon 3E(1), proscribing a judge's "personal bias or prejudice concerning a party" – which better conformed to my February 23rd affidavit. The first and largest section of that affidavit was "The Demonstrated Actual Bias of Judge Brian Holeman, Entitling me to his Disqualification" (at pp. 2-9), whose evidentiary showing was buttressed by four subsequent sections, two of whose titles also contained the words "Actual Bias" or "Biased".

21. The District of Columbia has an explicit rule for adjudication of "bias or prejudice of a judge". It is Civil Procedure Rule 63-I, applicable to criminal cases by Criminal Procedure Rule 57(a); *Anderson v. United States*, 754 A.2d 920, 922 (D.C. App. 2000). The Court is presumed familiar with these rule provisions – and would have been reminded of them from review of the record herein, *to wit*, Senior Judge Stephen Eilperin's September 3, 2003 Memorandum and Order (Exhibit "LL"), denying

that branch of my August 17, 2003 motion as sought his disqualification. Such decision could hardly be missed, as it is referred to at the very outset of my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions as reinforcing my "entitlement to change of venue" (at ¶3).

22. From that September 3, 2003 Memorandum and Order (Exhibit "LL", p. 2), the Court would have seen that Judge Eilperin regarded Rule 63-I as governing adjudication of my August 17, 2003 motion for his disqualification. This should have prompted the Court to recognize that adjudication of my February 23rd motion for its disqualification was also governed by that Rule.

23. Superior Court Civil Procedure Rule 63-I states:

> "(a) Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-I(b), to hear such proceeding.
>
> (b) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time." (underlining added)

24. District of Columbia caselaw – reflected in the annotations to Rule 63-I – is that because Rule 63-I "tracks the language of 28 U.S.C. §144", guidance as to its

interpretation is found in cases interpreting 28 U.S.C. §144; *In re Bell*, 373 A.2d 232, 233 (D.C. App. 1977).

25. Interpretive caselaw confers upon the judge who is the subject of a party's affidavit evaluation of that party's compliance with the procedural requirements, which, if satisfied, expressly bar him from proceeding further.

26. Since I am a *pro se* litigant, the procedural requirement that "counsel of record" sign a "certificate of good faith" has no relevance. As to the timeliness requirement, my February 23rd affidavit was plainly timely. In any event, the Court made NO finding with respect to either of these procedural requirements. As to the sufficiency of the affidavit's allegations of bias and prejudice, the Court also made NO finding. Indeed, the Court's bald assertion that I had "established no facts that the trial judge's impartiality might reasonably be questioned" not only fails to use the operative words "bias or prejudice", but employs an improper standard. Evaluation of an affidavit's sufficiency is not a matter of "established...facts":

> "On such a motion it is the duty of the judge to pass only on the legal sufficiency of the facts alleged to ascertain whether they support a charge of bias or prejudice. *E.g., United States v. Townsend*, 478 F.2d 1072, 1073 (3d Cir. 1973); *Simmons v. United States*, 302 F.2d 71, 75 (3d Cir. 1962). Neither the truth of the allegations nor the good faith of the pleader may be questioned, regardless of the judge's personal knowledge to the contrary. *E.g. Berger v. United States*, 255 U.S. 22, 65 L. Ed. 481, 41 S.Ct. 230 (1921); *United States v. Townsend, supra; Hodgson v. Liquor Salesmen's Union*, 444 F.2d 1344, 1348 (2d Cir. 1971)...Despite our sympathy with district judges confronted with what they know to be groundless charges of personal bias

> we must apply §144 as it was enacted by Congress." *Mims v. Shapp*, 541 F.2d 415, 417 (3d Cir. 1976)[4].

27. Reasonably inferable from the Court's failure to make requisite findings of sufficiency with respect to my February 23rd affidavit's allegations as to its actual bias, is that it knew the affidavit was sufficient. Certainly, the Court would have recognized its sufficiency from reading *Liteky v. United States*, 510 U.S. 540 (1994) – cited in Judge Abrecht's Memorandum Explaining Denial of Motion for Change of Venue (Exhibit "MM", at p. 2). Her Memorandum both paraphrased and quoted *Liteky* as follows:

> "the Supreme Court stated that a judge should recuse for bias if the judge has a deep-seated favorable or unfavorable opinion 'that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess,...or because it is excessive in degree.' Id at 550".[5]

28. My February 23rd affidavit chronicled that the Court's actual bias was completely "*wrongful*", "*inappropriate*", and "undeserved". That showing has now been supplemented by this affidavit relating to the Court's succession of dishonest, insupportable Orders that it has since rendered (Exhibits "AA-1", "AA-2", "AA-3", "AA-4", "DD", "HH"). Together, these two affidavits

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[4] *Mims v. Shapp* is cited in *Liberty Lobby, Inc. v. Dow Jones, Inc.*, 838 F.2d 1287, 1302 (U.S. App. D.C. 1988), itself cited by Judge Eilperin's September 3, 2003 Memorandum and Order (Exhibit "LL", at p. 2).

[5] Judge Abrecht's quoted excerpt from *Liteky* fails to italicize the words "*wrongful*" and "*inappropriate*" – which is how they appear in the Supreme Court's decision.

particularize an actual bias so "pervasive" as to "make fair judgment impossible" – the standard enunciated in *Liteky* with respect to judicial rulings (at 551, 556, 565)[6]. Indeed, it is not necessary to look beyond what the Court has done with respect to my dispositive October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions – depriving me even of the relief to which even the biased Judge Milliken recognized I was entitled (Exhibit "DD") -- to see how resoundingly the Court has repudiated ANY judgment in its patent "protectionism" of the prosecution.

29. Such Court Orders, all rendered subsequent to my February 23rd affidavit, must be vacated -- as the Court was without authority to "proceed" in rendering them pursuant to Superior Court Civil Procedure Rule 63-I.

D.C. Code §10-503.18 Entitles me to Removal/Transfer of this Case to the United States District Court for the District of Columbia – and the Record Herein Establishes the Necessity of Such Relief

30. The Court's February 25, 2004 Order denying my request for change of venue (Exhibit "AA-3") is another insupportable deceit. Its reliance on Judge Abrecht's September 4, 2003 Memorandum Explaining

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6 Contrary to District of Columbia caselaw and annotations, which routinely purport that "It is well settled that a motion for recusal under 28 U.S.C. §144 and §455 must be based upon prejudice from an extrajudicial source", such as *Liberty Lobby, Inc. v. Dow Jones, Inc.*, 838 F.2d 1287, 1302 (U.S. App. D.C. 1988) – cited for such proposition in Judge Eilperin's September 3, 2003 Memorandum (Exhibit "LL", p. 2) -- the Supreme Court has said the opposite in *Liteky*. This is most succinctly summed up in Justice Kennedy's 4-judge concurring opinion:

> "...the Court is correct to conclude that an allegation concerning some extrajudicial matter is neither a necessary nor a sufficient condition for disqualification under any of the recusal statutes." (at 561)

Denial of Motion for Change of Venue as establishing the "law of this case as to venue" disregards the express notice at ¶3 of my October 30, 2003 motion that Judge Abrecht's decision, like that of Judge Eilperin, reinforces my "entitlement to change of venue" – and the necessity to ensure

> "the appearance and actuality of fair and impartial justice by transferring this politically-explosive case to a court outside the District of Columbia, whose funding does not come directly from Congress, and, if possible, whose judges are not appointed by the President, with the advice and consent of the Senate or one of its committees".

31. Certainly, if the Court reviewed the record that was before Judges Eilperin and Abrecht when they rendered their decisions – (a) my August 6, 2003 motion to adjourn the August 20, 2003 conference for ascertainment of counsel; (b) my August 17, 2003 motion for reargument, disclosure by, and disqualification of, Judge Eilperin, and for transfer of the case outside the District of Columbia; (c) the audiotape/transcript of the August 20, 2003 conference (Exhibit "KK"); (d) my correspondence with Judge Abrecht's chambers, both before and after the August 20, 2003 conference (Exhibits "NN", "OO") – it knows that each of these Senior Judges ran "roughshod" over my sacrosanct counsel rights, which I had invoked – and then sought to conceal what they had done by their dishonest, self-serving decisions in which they wrongfully refused to recuse themselves (Exhibits "LL", "MM")[7].

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[7] The dishonesty of Judge Abrecht's Memorandum (Exhibit "MM") begins in its very first paragraph – with its false inference that the Judge's oral denial of my motion for change of venue at the August 20, 2003 conference respected my due process rights, *to wit*,

> "Assistant U.S. Attorney Mendelsohn appeared in person and opposed the Motion with oral argument to which the

32. As for the Order's assertion that there had been "no demonstration of newly presented facts or a change in substantive law" to warrant change of venue (Exhibit "AA-3"), such is refuted by my February 23rd affidavit's painstaking factual demonstration as to the biased and prejudicial conduct of Senior Judge Milliken, covered-up and compounded by the Court. As therein stated and demonstrated:

> "The record in this case, as in the 1997 case against me on a trumped-up 'disorderly conduct' charge (D-177-97), suggest a pattern by this Court of rushing criminal cases to trial, without concern for defendants' discovery rights -- at least where the arrests involve U.S. Capitol Police and the U.S. Senate Judiciary Committee."

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defendant responded." (at p. 1, underlining added).

In fact, as the transcript of the August 20, 2003 conference reflects (Exhibit "KK"), I responded by vigorously protesting that Judge Abrecht was trampling on my counsel rights, was unfairly relieving the prosecution of its burden to set forth in opposition in written form, and was depriving me of meaningful reply to the prosecution's oral opposition. [p. 20, ln. 4- p. 29, ln. 7; p. 39, ln. 22-p. 40, ln. 6; p. 45, lns. 4-10].

Such dishonesty carries through to the very end of the Memorandum (at p. 4), where – in a footnote – Judge Abrecht claims

> "there is no merit to defendant's surprise argument that this Court should recuse itself from ruling on her motion for change of venue (in this 2003 case) because her husband Gary L. Abrecht apparently dismissed her complaint against U.S. Capitol Police in 1996, while he served as Chief of Police, a position from which he retired in May 2000."

As the transcript shows, Judge Abrecht was unwilling to allow me to provide her a copy of the complaint and assist her in understanding the connection between the actions of her husband with respect to my 1996 police misconduct complaint and the present case. [p. 15, ln. 14- p. 20, ln. 6; p. 21, lns. 20-25; p. 25, lns. 10-13; p. 29, ln. 19-p. 30, ln. 11.

33. In any event, the Court, in its reliance on Judge Abrecht's six-month old Memorandum Explaining Denial of Motion for Change of Venue, did not have to examine the record that was before Judge Abrecht to know the inapplicability of the proposition announced on her Memorandum's first page:

> "Controlling case law in the District of Columbia is that change of venue is not available because the Superior Court of the District of Columbia sits as a single unitary judicial district. *United States v. Edwards*, 430 A.2d 1321, 1345 (D.C. 1981), cert. denied, 455 U.S. 1022 (1982), *Catlett v. United States*, 545 A.2d 1202 (D.C. 1988)."

Nor did the Court have to even read Judge Abrecht's two cited cases[8]. Rather, the Court only had to read the section of the District of Columbia Code pertaining to prosecutions for offenses committed on "Capitol Grounds" under D.C. Code §10-503.16. That section is D.C. Code §10-503.18, which states in pertinent part:

> "(c)...Prosecution for any violation of 10-503.16(a) or for conduct which constitutes a felony under the general laws of the United States or the laws

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8 These two cases were cited to Judge Abrecht by Mr. Mendelsohn at the August 20, 2003 conference – to which I immediately responded: "That may be readily distinguishable, so I would have to have an opportunity – to review that." [p. 24, lns. 17-21]; "What were the circumstances of, in those cases? Maybe they are readily distinguishable." [p. 25, lns. 8-9]. I also posed the question to Judge Abrecht, "...are you familiar with those legal authorities to which he cited?" [p. 28, lns. 19-20] – to which she responded, "Ms. Sassower, I am prepared to rule on that motion at this time." [p. 28, lns. 21-22].

Despite my protests, "...it is reasonable to expect that on such a serious issue Mr. – there is no prejudice to the Court, none whatsoever, to require Mr. Mendelsohn to interpose papers in response, including a memorandum of law. That's his burden. I have met my burden. I have put in formal papers" [p. 29, lns. 2-7], Judge Abrecht would not require Mr. Mendelsohn to put in written opposition, to which I would have an opportunity to respond.

> of the District of Columbia shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of this part **may** be in the Superior Court of the District of Columbia.... (bold added for emphasis)

34. In other words, while the prosecution against me for "disruption of Congress" pursuant to D.C. Code §10.503.16(b)(4), "**may** be in the Superior Court for the District of Columbia", it is actually properly venued in the United States District Court for the District of Columbia. As such, *United States v. Edwards* and *Catlett v. United States*, which did not involve prosecutions pursuant to D.C. Code §10.503.16, are irrelevant – as likewise that the District of Columbia has only a single unitary judicial district.

35. Based on the language of D.C. Code §10.503.18, it would appear that I am legally entitled to have the U.S. Attorney prosecute this charge against me in the U.S. District Court for the District of Columbia, with no special showing by me required for that venue.

36. That being said, the record herein is overwhelming and dispositive in establishing an ongoing pattern of judicial lawlessness warranting the removal of this case to a another venue. Where – as here -- supervisory authorities of the Superior Court have "stood idly by" in face of the notice given by my February 26th, February 27th, and March 17th memoranda (Exhibits "BB", "EE", "JJ")– such Court, as a whole, forfeits any claim to being a "fair and impartial tribunal".

WHEREFORE, it is respectfully prayed that the relief sought in the accompanying notice of motion be granted.

_____s/_____
ELENA RUTH SASSOWER

Sworn to before me this
22nd day of March 2004 – Notary Public

[Appellant's Appendix: 1027-1033]

Transcript of petitioner's April 16, 2004 trial motion for judgment of acquittal

Sassower: I am advised that to preserve my rights I should be moving for a judgment of acquittal. And I am prepared to argue that motion.

Judge Holeman: Please proceed.

Sassower: Although I look forward, can hardly wait to putting on the defense case, it has been my position from the outset of this prosecution that the charge against me is not just bogus but malicious.

[1028] And that this is demonstrated prima facie by the videotape which is conclusive evidence that there was no act of disruption of Congress within the statute, within the proof, burden of proof.

And moreover, that the relevant correspondence, in particular the 39-page fax of May 21st, 2003 sent to Detective Zimmerman and acknowledged by him on the stand, establishes resoundingly that there was no intent.

Without the act and without the intent, there is no basis for this prosecution. Indeed, even were there an act, there needs to be intent, and there is none, and [it] was known at the outset by the prosecution that there was no intent.

Now specifically, I have prepared long ago a memorandum containing an analysis of the videotape. The videotape does not speak for itself, unless it is examined carefully with the ear up close so that the words are distinctly heard, slowed down. And I have done the appropriate interpretive analysis.

Before providing the Court with that interpretive analysis of the videotape shown yesterday, I wish the Court to be reminded of the fact that before trial, repeatedly in my submissions, I asserted without any denial or dispute by the government that the **[1029]** videotape exposed the deceit of the underlying

prosecution documents on which this disruption of Congress case rested.

It was undisputed in the record before the court. However, now I will give the particulars as to what the videotape shows.

Judge Holeman: You don't need to do that, just make your next point. You've already established your contention that the videotape does not speak for itself.

Sassower: Yes.

Judge Holeman: Move on to your next point please.

Sassower: Well, may I offer into, for the Court's review, and I'm happy to give a copy to the government so that there can be no doubt here. Because I will go through this analysis on the stand. And rather than –

Judge Holeman: Well, --

Sassower: -- wasting additional court time, I think it would be useful.

Judge Holeman: Well, what you may or may not state on the stand is a matter for me to address at the time that you make the, the proffer. What I want to hear now is the remaining points for your motion for judgment of acquittal.

Sassower: All right. The videotape, as **[1030]** analyzed carefully, evaluated, establishes there's no act.

Judge Holeman: And the 39-page fax establishes –

Sassower: And the 39-page fax --

Judge Holeman: -- no intent. What are your next points? We don't need a reiteration –

Sassower: The additional –

Judge Holeman: -- of that.

Sassower: The additional –

Judge Holeman: When I speak –

Sassower: I'm sorry.

Judge Holeman: -- don't you speak. We already have a record made –

Sassower: Uh-huh.

Judge Holeman: -- of the videotape as establishing no act, of the 39-page fax establishing no intent.

Sassower: I additionally would proffer to the Court the, in addition to the videotape, --

Judge Holeman: Yes.

Sassower: -- the transcript that was handed over by the prosecution to me at the same time as a copy of the videotape was handed over to me. And an analysis of that transcript is also contained in my memo analysis of the videotape.

Further, the analysis of the videotape and **[1031]** transcript to which I referred also contains an analysis of the prosecution document[s] demonstrating by comparison with the videotape and the transcript that they are materially false and deceitful.

Because without that falsehood, without those falsehoods and deceit, the government knew they could not bring this charge.

Finally, I proffer to the Court, and again this, the significance of this particular document was also highlighted in my motion papers, in the record before trial, my May 28th memorandum to Chairman Hatch –

Mendelsohn: Objection, Your Honor.

Sassower: -- And Ranking Member Leahy.

Judge Holeman: I'll allow it for purposes of this motion. Proceed please.

Sassower: Containing my most contemporaneous recitation of what had taken place at the hearing and immediately thereafter in the hallway with respect in particular to chairman, Presiding Chairman Chambliss who is identified in the underlying prosecution document[s] as the complainant.

Finally, I would once again note to the Court that the government was free to offer the complainant to appear in support of this charge. The government has **[1032]** not done so. Senator Chambliss has, won't appear, instructed Senate Legal Counsel to move to quash my subpoena.

I have a confro, a right of confrontation under the Sixth Amendment, recognized most recently by the Supreme Court in, in the [M]atter of Crawford.

Finally, finally, and once again recognizing the evidence before the Court that there is no precedent, there's no other instance where a citizen's respectful request to testify at a congressional committee's public hearing resulted in a criminal charge of disruption of Congress, I submit, as a matter of law, and as an elementary proposition, that a citizen's respectful request to testify at a congressional committee's public hearing is not and must never be deemed to be disruption of Congress.

Judge Holeman: Very well.

Sassower: Thank you, Your Honor.

Judge Holeman: Thank you. Now, any response from the government?

Mendelsohn: Your Honor, viewing the evidence in the light most favorable to the government, as the Court must do at this time, we believe that a reasonable jury could find the defendant guilty beyond a reasonable doubt based on the evidence presented by the government, including the testimony of Special Agent Lippay, Detective Zimmerman, Officer Jennings, the videotape that was introduced into evidence as well as the testimony of Sergeant Bignotti.

And we would ask the Court to deny the defendant's motion for judgment of acquittal at this time.

Judge Holeman: Very well. The standard that must be applied in ruling upon a motion for judgment of acquittal is set forth in Curley vs. United Sates, 81 U.S. App. D.C. 389, page 392, 160 F. Second 229, page 232. It's a 1947 case.

In Curley, the standard was set forth succinctly as follows: if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted.

In this case, the standard has not been reached. There has been evidence presented by the government from which a reasonable mind could conclude guilt beyond a reasonable doubt. And based upon that, the motion for judgment of acquittal must be denied.

Sassower: May I –

Judge Holeman: There's no further discussion on the motion...

[Appellant's Appendix: 1565-1577]

Petitioner's analysis of underlying prosecution documents, Senate Judiciary Committee May 22, 2003 videotape & transcript – referred-to by petitioner's April 16, 2004 motion for judgment of acquittal (at A-166-168 herein)

DATE: July 7, 2003

TO: American Civil Liberties Union

FROM: Elena Ruth Sassower, defendant
United States v. Elena Ruth Sassower,
M-4113-03 "Disruption of Congress"

RE: Documents Underlying the Prosecution

On May 23, 2003, I was arraigned on the criminal charge of "disruption of Congress". At that time, the court-assigned attorney representing me for the arraignment, Mitchell Baer, Esq. (202-347-1250), gave me a document entitled, "Information". Dated May 23rd, such essentially quoted *verbatim* 10 D.C. Code Section 503.16(b)(4) (2001 ed.), which it stated I had violated on May 22nd. Signing this "Information" was an Assistant United States Attorney, whose illegible signature was above the typed name of Officer Roderick Jennings, who had not signed the document.

Mr. Baer also gave me a May 23rd letter from the U.S. Attorney for the District of Columbia. Signed by Assistant U.S. Attorney Leah Belaire -- whose misfeasance I had chronicled five years earlier when she was "Investigative Counsel" to the Senate Judiciary Committee[1] -- the letter extended no "plea offer" and

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[1] Ms. Belaire's misfeasance as "Investigative Counsel" is summarized at page 10 of my August 11, 1998 letter to ABA President Philip Anderson, a copy of which I sent her, certified mail, under an August 19, 1998 coverletter. Comparable misfeasance by successor

purported to provide "current and comprehensive" discovery. The annexed documents included the following:

(1) A photocopied page identified as a "copy of def's handwritten statement from which she was reading during disruption (1 page)" -- whose culminating text reads "Mr. Chairman, there's citizen opposition to Judge Wesley based on his **[p. 2]** documented corruption as a New York Court of Appeals judge. May I testify?";

(2) Three documents identified as P.D. 163 ("Arrest/Prosecution Report"), P.D. 251 ("Event Report"), and P.D. 252 ("Supplement Report")[2]. Each dated May 22nd, these documents give an identical version of what I am purported to have said, *to wit*, "Judge Wesley, look into the corruption of the New York Appeals Court", followed by a characterization that I "wanted to testify". The "Arrest/Prosecution Report" identifies the "Arresting Officer's Name" (at #8) as Officer Jennings and further identifies him as the "Officer Making Statement" (at #68). Sergeant Bignotti is listed as an "Assisting Officer" (at #42), with her signature appearing as a "Reviewing Official" (at #70). The "Event Report" and "Supplement Report", which contain no inquiry as to the "Arresting Officer", list Officer Jennings as the "Reporting Officer"(at #39 and #17, respectively), with Sergeant Bignotti as the "Supervisor" (at #34, #44 and #22, respectively). Each of these Reports identifies Detective Zimmerman as the "Investigator" (at #33 and #18, respectively).

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counsel at the Senate Judiciary Committee, condoned, if not directed, by the Committee leadership and members, led to the chain of events culminating in my arrest.

2 There is also a second "Supplement Report" dated May 22nd.

Both the "Arrest/Prosecution Report" and "Event Report" black out the complainant's name. However, the "Supplement Report" identifies the complainant as "Chambliss, Saxby" – with a second "Supplement Report", blacking out the names of four "witnesses".

(3) A document identified as P.D. 778 -- "Citation Release Determination Report". Dated May 22nd, it identifies Officer Jennings as the "Arresting Officer", with Sergeant Bignotti as the "Official Making the Release Decision" -- which in this case was to disapprove release;

(4) Print-outs relating to my June 25, 1996 arrest for "Disorderly Conduct – Loud and Boisterous" -- an arrest which the May 23rd letter states (at p. 6) will be used as "*Drew/Toliver* evidence" in that "Def. is known to Capitol Police for being disruptive in the past; Def was arrested in 1996 for disorderly conduct on Capitol grounds."

On June 20th, the date set for a status conference, I appeared in court, assisted by an attorney I had retained for that limited purpose, Mark Goldstone, Esq. (301-530-6612). Shortly before the conference began, Mr. Goldstone requested to see the court file. As I recall, the court file did not contain a copy of the U.S. Attorney's May 23rd letter with its appended discovery documents. Instead, there was a single page document, dated May 23rd, which I had not previously received[3]. Bearing the caption **[p. 3]**,

"Superior Court for the District of Columbia
Criminal Division

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[3] Following the status conference, I requested and received a copy from the Court's clerk.

United States
vs
Elena Sassower",

it was purportedly signed and sworn to by Officer Jennings, who purported to describe "events and acts" I had committed. In so doing, this May 23rd statement both replicates AND substantially deviates from the May 22nd documents Officer Jennings had signed under Sergeant Bignotti's supervision, namely, the "Arrest/Prosecution Report", "Event Report", and "Supplement Report". As hereinafter demonstrated -- including by comparison to the videotape and stenographic transcript of the Senate Judiciary Committee's May 22nd "hearing" -- this May 23rd statement -- as likewise the predecessor May 22nd documents -- are knowingly and deliberately false and misleading and establish that the charge against me is not just bogus, but malicious.

According to the typed text of the May 23rd statement,

> "Officer Jennings observed the defendant, later identified as Elena Sassower, stand up and shout, among other things, 'Judge Wesley, look into the corruption of the New York Appeals Court.' The defendant further stated that she wanted to testify before the Committee. The disruption occurred during a Judiciary Committee hearing. After striking the gavel twice, the Judiciary Committee Chairman Senator Chambliss requested United States Capitol Police to restore order and asked everyone to remain seated. The defendant was then removed from the hearing room and placed under arrest. Defendant was read her rights."

To this is appended a hand-written addition,

> "After the Senator called for order, the defendant continued to shout."

To begin with, it is NOT "Officer Jennings" whose name should be appearing in this statement, but Sergeant Bignotti. It was Sergeant Bignotti and Sergeant Bignotti alone who ordered me to step out of the "hearing room" and then immediately "placed [me] under arrest". This was done without the slightest consultation of Officer Jennings – a **[p. 4]** fact I vigorously made known on May 22nd at Capitol Police station when it first came to my attention that Officer Jennings was being substituted for Sergeant Bignotti[4] as the arresting officer.

As for my being "later identified as Elena Sassower", Sergeant Bignotti would have had reason to know who I was AT THE TIME. As reflected by my May 21st letter to Detective Zimmerman -- which should have been, but was not, included in the U.S. Attorney's May 23rd letter as *Brady* material[5] -- Capitol Police not only knew who I was IN ADVANCE of the Senate Judiciary Committee's "hearing", but had initiated a phone call to me at Senator Clinton's instance. In that call, Detective Zimmerman, who is part of the "Threat Assessment Section", threatened that Capitol Police would arrest me at the Senate Judiciary Committee's May 22nd "hearing" if, at its conclusion, I rose to request to testify and the presiding chairman banged his gavel -- even if he did not request that I be arrested. This, notwithstanding the

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4 This came to my attention when I was asked to sign a "Prisoner's Property Receipt", which identified Officer Jennings as the person I had been "arrested by". I refused to do so, adamantly stating that the arresting officer had been Sergeant Bignotti -- and that until it was changed I would not sign it. Rather than make such change to comport with the reality, Capitol Police wrote on the signature line, "Refused", leaving intact my strike out of Officer Jennings' name and number.

5 According to the May 23rd letter (p. 6), the U.S. Attorney's office was "currently aware" of no *Brady* material.

precedent of the June 25, 1996 Senate Judiciary Committee "hearing" where I was NOT arrested by Capitol Police for rising, at the conclusion of the hearing, with a request to testify. Rather, Capitol Police had then merely warned me that if I said another word I would be removed.

It is hard to imagine that the senior officer dispatched to the Senate Judiciary Committee "hearing" room -- in this case Sergeant Bignotti -- was not "briefed" as to the conversation between Detective Zimmerman and myself. In any event, upon seeing me, Sergeant Bignotti may be presumed to have independently recalled what had transpired at the June 25, 1996 "hearing". Not only was she there, but, following that "hearing", she had participated in my arrest in the hallway outside the Committee on a trumped-up "disorderly conduct" charge -- as to which I had filed a September 22, 1996 police misconduct complaint against her and her fellow officers[6].

[p. 5] That Sergeant Bignotti may have received a directive from Capitol Police to carry out Detective Zimmerman's threat and arrest me in disregard for the precedent established by the June 25, 1996 "hearing" or that she harbored personal *animus* against me for filing the September 22, 1996 police misconduct complaint would explain her one-track, completely irrational decision to arrest me when there was NOTHING about my conduct at the May 22nd "hearing" that objectively called for such draconian response -- and when,

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[6] Detective Bignotti's name and number appears on the June 25, 1996 "Prisoner's Property Receipt" annexed as Exhibit "E" to my September 22, 1996 police misconduct complaint. Upon information and belief, she is the female sergeant whose misconduct is chronicled at pages 6-7 of the complaint.

Detective Zimmerman was alerted to this police misconduct complaint in our May 21st phone conversation together -- and it is further referenced in my May 21st letter to him. Capitol Police's file of that complaint is *Brady* material -- all the more relevant because of the U.S. Attorney's announced intention to use the June 25, 1996 arrest as *Drew/Toliver* evidence.

additionally, the background facts were so dispositive in my favor. In vain, I tried to discuss both with Sergeant Bignotti as she put me in handcuffs -- specifically including that I had not been arrested for similarly requesting to testify in 1996. That my arrest is being pegged on Officer Jennings reflects Sergeant Bignotti's knowledge and that of Capitol Police that there is something to hide.

As to what occurred at the May 22, 2003 "hearing" -- Sergeant Bignotti – and likewise Officer Jennings – had positioned themselves only yards from the backrow in which I was seated. As such, they can be expected to have heard precisely what I said. Such expectation is all the greater since, according to Officer Jennings' May 23rd statement, I "st[oo]d up and shouted".

Moreover, if Sergeant Bignotti and Officer Jennings could not recall my two "shouted" sentences, they could see I was reading from a page of notes -- a fact reflected by the U.S. Attorney's May 23rd letter, annexing a "copy of def's handwritten statement from which she was reading during disruption (1 page"). From this notepage, which they took from me upon my arrest, Sergeant Bignotti and Officer Jennings could recollect my exact words:

> "Mr. Chairman, there's citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge. May I testify?"

Unlike rookie Officer Jennings, Sergeant Bignotti may be presumed to know that this respectful question – asked at an appropriate point of the Senate Judiciary Committee's public "hearing" – could not possibly support a "disruption of Congress" charge. Therefore, something wholly different had to be concocted. Indeed, it was concocted not just for Officer Jennings' May 23rd mostly-typed statement, but for the handwritten entries on the documents he prepared within two hours of my arrest on

May 22nd: the "Arrest/Prosecution Report", the "Event Report", and the "Supplemental Report".

Thus, Officer Jennings' May 23rd statement, as likewise his three May 22nd documents, purport that I shouted, "Judge Wesley, look into the corruption of the New York Court **[p. 6]** of Appeals". By placing these words in "quotes", Officer Jennings implies that this is actually what I said -- words directed to Judge Wesley, but having no stated relevance to him and the "hearing". This is then compounded by Officer Jennings' switch to a characterization, rather than my precise words, that I "wanted to testify" -- thereby concealing that I expressed this "want[ing]" by a proper request.

This replication from the May 22nd documents was apparently deemed insufficient for the May 23rd statement, to which there are additions not contained in the May 22nd documents. Thus the May 23rd statement purports that I "shout[ed]" "other things" -- without specifying what these "other things" are. It also identifies that this "disruption occurred during a Judiciary Committee hearing" – thereby implying that I interrupted proceedings then in progress. The statement adds the existence of a gavel -- stating that it was "after striking the gavel twice"[7] that "Judiciary Committee Chairman Senator Chambliss requested United States Capitol Police to restore order and asked everyone to remain seated". The hand-written addition that I "continued to shout" "after the Senator called for order", then implies that I was arrested precisely because I would not otherwise come to "order".

The true facts as to what occurred are best evidenced by the video -- which is why, upon my arrest, I made known

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[7] No gavel is mentioned in the May 22nd documents, whose reference to "twice" is to Chairman Chambliss twice requesting the police to "restore order".

to Sergeant Bignotti and Officer Jennings that it needed to be immediately secured. Assistant U.S. Attorney Aaron Mendelsohn (202-514-7700), who represented the prosecution at the June 20th status conference, provided me with a copy of the videotape at that time. Such is vastly superior to the stenographic transcript -- a copy of which Assistant U.S. Attorney Mendelsohn also provided me at the status conference -- since it presents, in real time, simultaneously occurring events, which the transcript only imperfectly records, if at all.

To begin with, both the videotape and transcript reflect that the so-called "disruption" did NOT occur "during a Judiciary Committee hearing" – as Officer Jennings' May 23rd statement purports -- but upon its being "adjourned". Only AFTER Senator Chambliss said:

> "...if there are no further questions or participation from anyone on the Committee, we will stand adjourned." [Tr. 65, lns. 15-17]

[p. 7] did I begin I commence to speak -- which was for a total of eight seconds.

As to Chairman Chambliss striking his gavel "twice", the transcript of the May 22nd "hearing" indicates nothing about a gavel. From the video, the reason is obvious. The single strike of the gavel was NOT at all significant. It certainly was not to quell any "disruption", which is how Officer Jennings' May 23rd statement makes it appear. Rather, Chairman Chambliss struck the gavel to symbolize the close of the "hearing" – while saying, "Thank you very much" [Tr. 65, ln. 18].

The video also makes plain that I began speaking as Chairman Chambliss was saying, "Thank you very much" [Tr. 65, ln. 18] – and not, as the transcript makes it appear, after [Tr. 65, ln. 20]. Indeed, it is because our words are simultaneous -- with mine coming from the back of the room – that my initial words are not audible

from the video.

Presumably, these initial words were also not audible to the stenographer. However, her transcript fails to reflect such fact – while altering my words immediately following "Mr. Chairman". Her transcript also omits my final words "May I testify?", which, although eclipsed by the beginning of Chairman Chambliss' response, "I will issue a warning that we will have order" [Tr. 65, lns. 23-24], can nonetheless be discerned from the video.

The entirety of what the stenographer has me saying before any response from Chairman Chambliss is:

> "Mr. Chairman, we are in opposition to Judge Wesley based on his documented corruption at the New York Court of Appeals." [Tr. 65, lns. 20-22].

Thus, the transcript, although imprecise[8], nonetheless suffices to establish that I did NOT say, as the May 23rd statement and May 22nd documents purport, "Judge Wesley, look into the corruption of the New York Court of Appeals".

Further, the video makes plain that I had finished my concluding words, "May I testify?" by the time Chairman Chambliss had responded, "I will issue a warning that **[p. 8]** we will have order". [Tr. 65, lns. 23-24]. Indeed, as reflected by the video, his immediately following words, "The Committee will stand in recess until the police can restore order. Everyone remain seated." – as if there was some on-going, continued disturbance or ruckus -- were wholly superfluous, since, after asking, "May I testify?" I was completely silent.

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[8] The discrepancy in the transcript was the subject of my May 30, 2003 letter to the Miller Reporting Company, which asked that the stenographer preserve her "raw, untranscribed notes", as well as what I understand to be an audiotape of the "hearing" which the Company also records.

The heads of Officer Jennings and Sergeant Bignotti are not seen passing the video camera until this further, wholly unnecessary statement "until the police can restore order". They then pass from left to right.

It must be noted that the video, which is focused on Chairman Chambliss as he closes the hearing, shows no surprise on his face as I begin to speak from the back of the room. Rather, it shows him reaching for his reading glasses and then, presumably, for the paper from which, after I am taken out of the "hearing" room, he seems to read.

Before I am taken out, however, the transcript reflects a "pause". This can be timed from the video at eight seconds -- a period during which Sergeant Bignotti demanded that I step out of the "hearing" room. Although she did not state that I would be arrested, the very demand that I leave the "hearing room" was a significant enough departure from the precedent set at the June 25, 1996 Senate Judiciary Committee "hearing" as to lead me to believe -- based upon what Detective Zimmerman had threatened -- that I might be arrested. Because my stated position to Detective Zimmerman -- reiterated by my May 21st letter -- was that it was for the presiding chairman to decide whether a respectful request to testify should be punished by arrest, I then asked Chairman Chambliss:

> "Are you directing that I be arrested? Are you directing that I be arrested" [Tr. 66, lns. 3-4]

Chairman Chambliss did not respond to this straightforward question – much as he had not responded to my straightforward question "May I testify?". Instead, he answered, "I am directing that the police restore order." [Tr. 66, lns. 5-6]. Sergeant Bignotti then again demanded me to step out of the "hearing" room, prompting me to again ask Chairman Chambliss, "Are

you directing that I be arrested?" [Tr. 66, ln. 7]. The transcript shows no response, but only a "[Pause.]".

The video reflects what occurs in this nine second "[Pause]". The head of Sergeant Bignotti passes from right to left, followed by my head and the head of Officer Jennings. The sound of a door is then heard. Although the video does not zoom on Chairman Chambliss' face, the tempo of his immediately following words gives the **[p. 9]** impression that he is reading a prepared text:

> "Outside witness[es] are welcome to submit letters supporting or opposing nominees for the Committee's consideration, but it is not our usual procedure to invite outside witnesses to testify either in support or in opposition to the nomination.
>
> I realize this lady is disappointed that she is not able to make any statement this afternoon, but her disappointment in no way condones any disruption of this hearing." [Tr. 66, lns. 9-17].

He then states, "Again, we will stand adjourned. Thank you very much." [Tr. 66, lns. 18-19].

As my voluminous correspondence with the Senate Judiciary Committee reflects, "letters" submitted by "outside witnesses" -- no matter how serious and substantial -- are simply ignored by the Committee, whose leadership refuses to respond to written requests to testify. Indeed, from the prepared statement read by Senator Chambliss, it appears that the Committee's leadership "set me up" to be arrested. Were it otherwise, Senator Chambliss would have been provided with a statement to be read BEFORE I rose to request to testify -- a statement which acknowledged that the Committee had received a written request to testify, which was being denied because it was "not our usual procedure" -- and because such request did not fall within an exception thereto.

[Appellant's Appendix: 142-148]

Petitioner's May 28, 2003 memo to Senate Judiciary Committee Chairman Orrin Hatch & Ranking Member Patrick Leahy – referred-to in petitioner's April 16, 2004 trial motion for judgment of acquittal (at A-168-169 herein)

DATE: May 28, 2003

TO: Senator Orrin G. Hatch, Chairman,
U.S. Senate Judiciary Committee
By Fax: 202-224-6331 / 202-224-9102 [7 pages]
By E-Mail: senator_hatch@ hatch.senate.gov
swen_prior@judiciary.senate.gov

Senator Patrick Leahy, Ranking Member,
U.S. Senate Judiciary Committee
By Fax: 202-224-9516 / 202-224-9516 [7 pages]
By E-Mail: senator_leahy@leahy.senate.gov
rachel_arfa@judiciary.senate.gov

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

RE: (1) Upholding the People's Rights by Halting Senate Confirmation of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of Appeals;
(2) Preserving Exculpatory Evidence;
(3) Directing that Judge Wesley Answer the Substantive Questions NOT Asked at the May 22, 2003 Confirmation "Hearing"

This is to put you on notice that it would be a further betrayal of the American public – and, specifically, a betrayal of the People of the State of New York and the Second Circuit -- for the Senate Judiciary Committee to approve the nomination of New York Court of Appeals Judge Richard C. Wesley to the Second Circuit Court of

Appeals – while the criminal case of *United States of America v. Elena Ruth Sassower* (Superior Court of the District of Columbia, No. M-4113-03) is pending. Especially is this so where, additionally, you have made NO FINDINGS as to the accuracy of CJA's March 26, 2003 statement, particularizing the documentary evidence establishing that Judge Wesley knowingly and deliberately obliterated the most basic judicial and ethical standards to "protect" a corrupt New York State Commission on Judicial Conduct and a panoply of corrupt and complicitous public officers and agencies. Among these, Judge Wesley's friend and political patron, New York's Republican Governor George Pataki, who has rewarded him by this federal judgeship.

[p.2] It is unclear whether Senator Saxby Chambliss, Presiding Chairman at the May 22nd "hearing" on Judge Wesley's confirmation, is the complainant in the trumped-up criminal case against me wherein I am charged with "disruption of Congress" because of my public statement at the "hearing's" conclusion:

> "Mr. Chairman, there's citizen opposition to Judge Wesley based on his documented corruption as a New York Court of Appeals judge. May I testify?"

He kept silent as Capitol Police dragged me from the "hearing" room, while I called out to him:

> "Are you directing that I be arrested? Are you directing that I be arrested? Are you directing that I be arrested?"[1]

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[1] The foregoing should be reflected by the stenographic transcript of the May 22nd "hearing" – which the Miller Reporting Company, the official reporting service, will be delivering to the Senate Judiciary Committee tomorrow. I request a copy of the pertinent pages.

He kept silent, too, when, upon exiting the backdoor of the "hearing" room a few minutes later, he saw me in handcuffs and walked right passed me in the hallway, as I asked him:

> "Are you directing that I be arrested? Do you wish me to be arrested?"

Senator Chambliss – the ONLY Committee member present at the "hearing" following the "recess" -- will be a necessary witness at my trial. Indeed, should he NOT be called by the prosecution, I will, *as is my right*, subpoena him as my witness. At that time, I will question him as to whether he is the complainant – and, if so, his knowledge of the exculpatory facts and circumstances which you were duty-bound to share with him, in advance of the "hearing" -- unless he was to be your dupe. Indeed, he will be interrogated as to his knowledge of CJA's document-substantiated March 26, 2003 written statement[2], hand-delivered to the Committee under a May 5, 2003 memorandum addressed to each of you – as well as his knowledge of CJA's faxed and e-mailed May 19, 2003 and May 22, 2003 memoranda, also addressed to each of you, requesting your immediate personal review of the March 26, 2003 written statement **[p. 3]** and supervisory oversight of Committee counsel, who, apparently, undertook NO INVESTIGATION of the statement and made NO FINDINGS with respect to its particularized recitation of Judge Wesley's official misconduct. Obviously, too, Senator Chambliss will be interrogated as to his knowledge of CJA's faxed and e-mailed May 21, 2003 memorandum, also addressed to each of you, concerning the unwarranted threat I received from Capitol Police that I would be arrested at the May 22nd "hearing". Such memorandum, enclosing a copy of CJA's May 21st letter to Home-State Senator Schumer,

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2 CJA's March 26, 2003 written statement, as likewise ALL CJA's subsequent related memoranda and correspondence referred to herein, are posted on CJA's website: *www.judgewatch.org*.

expressly stated:

> "I do NOT wish to be arrested tomorrow for simply exercising a citizen's right in a democracy to peaceably and publicly request to testify in opposition – in the event the presiding chairman at tomorrow's public hearing to confirm Judge Wesley to a 'lifetime' Circuit Court of Appeals judgeship does not himself inquire – as had previously been done – 'if anyone in the room wish[es] to speak on behalf of or against the nominee'. [*see* fn. 1 of CJA's enclosed letter].
>
> Further, I request that Capitol Police be instructed NOT to arrest me for peaceably and publicly requesting to testify in opposition -- unless the presiding chairman publicly calls for them to arrest me in response [*see* fn. 2 of CJA's enclosed letter and text on page 2]."

These – and my May 21, 2003 letter to Capitol Police, to which you were each indicated recipients and which I sent each of you – in and of themselves resoundingly establish that the criminal charge of "disruption of Congress" cannot be sustained – since essential to the charge is that I

> "<u>wilfully and knowingly</u> engaged in disorderly conduct...with the <u>intent</u> to impede, disrupt, and disturb the orderly conduct...of a hearing before, and deliberations of, a committee or subcommittee of the Congress or either House thereof." (emphases added)

These documents make clear that my "intent" was not to be "disorderly" or to "impede, disrupt, and disturb". Rather, it was to respectfully ask whether I might be permitted to testify as to documentary proof of Judge Wesley's unfitness – consistent with my responsibilities as a citizen in a democracy. This is precisely what I did

at an [p. 4] appropriate point at the conclusion of the "hearing" – as to which there is a videotape[3], in addition to a stenographic transcript.

The criminal charge against me is a vicious assault on citizen rights and responsibilities, in addition to an affront to the most fundamental standards of decency. You may be sure I will wage a vigorous defense. Indeed, I hereby put you on notice that ALL documents which I furnished you in connection with CJA's citizen opposition to Judge Wesley, whether by hand, by fax, or by e-mail, whether through the Committee or *via* your Senate offices, are EXCULPATORY – and I will demand that they be produced for my criminal trial as dispositive of my "intent". They are to be safeguarded in the interim – as, likewise, any notes, memoranda, written messages generated by your staff, whether at the Committee or in your Senate offices with respect thereto.

I further put you on notice that I plan to subpoena each of you to testify as to the EXCULPATORY documents which I furnished you – so that you may explain what actions you took, consistent therewith, to ensure that I would not

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3 The videotape was made by, and is in the possession of, the Senate Recording Studio (202-224-4977). Although immediately upon my May 22nd arrest, I repeatedly requested Capitol Police to take steps to secure the videotape's preservation, as of today, no one has informed the Senate Recording Studio, which destroys tapes after 30 days, that the videotape of the May 22nd "hearing" is evidence in a criminal case and must be preserved. This is even though the U.S. Attorney's own May 23, 2003 "Discovery" statement lists the videotape as "Tangible Evidence", which "At trial, the government may seek to introduce".

As I have been informed that members of the public are allowed to view the Studio's videotapes and may obtain duplicates, so long as their requests are made through a Senate office, I ask that the Senate Judiciary Committee – either collectively or by any of its 19 individual Senators – request the Studio to duplicate the videotape of the May 22nd "hearing" and send it to me so that I may view it with such counsel as I may engage in the criminal case. I will pay whatever costs the Studio customarily charges for duplication and mailing.

be arrested for simply requesting to testify[4]. Indeed, from CJA's March 26, 2003 written statement and the substantiating record of *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of* **[p. 5]** *the State of New York*, contained in FIVE CARTONS AND ONE REDWELD FOLDER, in the Committee's possession since May 5th, you knew that such request was not only legitimate, but that any testimony I would offer as to Judge Wesley's "documented corruption as a New York Court of Appeals judge" would be TRUE and DISPOSITIVE of his unfitness.

Suffice to say, I will also subpoena New York Home-State Senators Schumer and Clinton, indicated recipients of all CJA's memoranda to you – and who, with you, would not respond with FINDINGS, or even comment, with regard to CJA's document-substantiated March 26, 2003 written statement.

Conspicuously, Senator Schumer – a member of the Senate Judiciary Committee – did not return after the "recess" at the May 22nd "hearing" to question Judge Wesley – leaving it to Senator Chambliss to ask Judge Wesley three insignificant questions, more for show than anything else.

That Senator Schumer knew there were substantive questions to be asked Judge Wesley at the May 22nd "hearing" is evident from CJA's May 19th memorandum to you, which I sent him[5]. As stated therein (p. 7) –

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4 As there was nothing about my request at the May 22nd "hearing" that warranted my arrest -- or even my removal from the "hearing" room -- Senator Chambliss' refusal to respond by either "yes" or "no" to my question as to whether he was directing that I be arrested, combined with the draconian and unprecedented position of Capitol Police, as reflected by my May 21st correspondence, suggests that there was an agreed-upon plan for my arrest.

5 The May 19th memorandum was TWICE transmitted to

referring to Judge Wesley's non-response to my two final motions in my lawsuit against the New York State Commission on Judicial Conduct[6] – and quoting from CJA's March 26, 2003 written statement:

> "As Judge Wesley did not see fit to respond to my 36-page October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief, except to deny it *without* reasons and *without* disclosure, he must do so now, addressing, if not each and every paragraph, th[e]n the facts and law presented by each and every section and subsection of the motion, for which a table of contents appears at pages 5-6. Likewise, since his response to the 'Question Presented for **[p. 6]** Review' in my 22-page October 24, 2002 motion for leave to appeal, was to deny it, *without* reasons, and *without* making the requested disciplinary and criminal referrals, pursuant to the cited ethical rules, he should be expected to demonstrate that the five lower court decisions of which the Commission is the beneficiary are NOT frauds. Let him begin by just trying to explain how the mandatory statutory language of Judiciary Law §44.1 regarding investigation of judicial misconduct complaints not determined by the Commission to be facially lacking in merit, so recognized by the Court in *Matter of Nicholson*, 50 N.Y.2d 597, 610-

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Senator Schumer: first, by fax and e-mail on May 19th under a transmitting memorandum addressed to him and Senator Clinton; and second by fax and e-mail on May 21st under a transmitting letter to the attention of his Director of Intergovernmental Affairs, Michael Tobman, to whom I had spoken about it by phone earlier that day.

[6] These two final motions, focally-discussed in CJA's March 26, 2003 statement, are: (1) my October 15, 2002 motion to reargue, vacate for fraud, lack of jurisdiction, disclosure & other relief; and (2) my October 24, 2002 motion for leave to appeal. In addition to the FOUR copies of each, which should be in your possession, the motions are also posted on CJA's website: *www.judgewatch.org*.

> 611 (1980), can be reconciled with the four decisions – two appellate -- which purport that the Commission has NO such mandatory duty. Certainly, Judge Wesley should be expected to confront my analyses of the decisions, annexed as Exhibits "H", "I", "K", and "L" -- or, at least, their salient aspects, incorporated into the text of my motion. This would include pages 8-12, as to the hoaxes perpetrated by Justice Cahn and Justice Lehner." (underlining in May 19, 2003 memorandum).

Shortly before I rose to ask to be permitted to testify at the May 22nd "hearing", Senator Chambliss stated that the members of the Senate Judiciary Committee would have until 5:00 p.m. today to submit questions for the nominees. I recalled this fact at about 2:30 a.m. on May 23rd as I shivered in a cold, bare, claustrophobic jail cell at the Metropolitan Police Station in downtown Washington, D.C. – when I yet had another ten hours of incarceration to endure before I would be brought before a judge for arraignment.

Based on CJA's March 26, 2003 written statement, it is the Senate Judiciary Committee's absolute duty to require Judge Wesley's response to these two motions, as above-indicated. Indeed, it is the special duty of Ranking Member Leahy and Senator Schumer, whose Vermont and New York constituents are in the Second Circuit, to insist that Judge Wesley respond, thereby sparing their constituents so corrupt a judge.

CJA requests that copies of this memorandum be distributed to each and every Committee member so that they may individually determine what is appropriate – and be held accountable by their constituents. Further, we request that this memorandum be included in the written record of the Committee's proceedings on Judge Wesley's nomination.

[p. 7]

s/ Elena Ruth Sassower

cc: President George W. Bush
Senator Saxby Chambliss, Presiding Chairman,
May 22nd "hearing"
Home-State Senator Charles E. Schumer
Home-State Senator Hillary Rodham Clinton
New York Court of Appeals Judge
Richard C. Wesley
P. Kevin Castel, Esq.
United States Attorney/District of Columbia
Capitol Police
The Press

[Appellant's Appendix: 1325-1330]

Transcript of petitioner's April 19, 2004 trial motion for judgment of acquittal

[1325]

Judge Holeman: ...When we resume in 10 minutes, we'll call the jury in, the defense will rest its case and we will then begin with my --

Sassower: Excuse me.

Judge Holeman: -- charging the jury.

Sassower: I have a motion, as is my right.

Judge Holeman: Very well.

Sassower: And may the record reflect that **[1326]** the Court is resting for me. I do not rest, as I was precluded, prevented from giving direct testimony from the stand as to the critical facts pertaining to this –

Judge Holeman: What is your motion?

Sassower: -- bogus, malicious –

Judge Holeman: What is your motion?

Sassower: I –

...

Sassower: Again, I make a motion for judgment of acquittal for this case which fails as a matter of law. The evidence now resoundingly shows that the Senate Judiciary Committee hearing was adjourned.

That at issue is a public congressional hearing at which a respectful request was made to testify. That is consistent with what a hearing is supposed to be about.

Judge Holeman: The question –

Sassower: The taking –

Judge Holeman: The question –

Sassower: -- and receiving of testimony.

Judge Holeman: The question for purposes of your motion is whether or not a reasonable fact finder could [1327] find proof beyond a reasonable doubt. That is your argument. That is the scope of it and make the argument now.

Sassower: Well, there is no precedent and none has been shown of another case where a citizen's respectful request at a public congressional hearing has resulted in an arrest. This, the, you not only have no act of disruption.

The whole idea that a respectful request at a public hearing to testify is disruption is an anathema, cannot be. And you have no appearance here by the complainant, Senator Chambliss, in support of this prosecution.

Apparently no one at the Senate Judiciary Committee is willing to put their name to such a proposition that a respectful request to testify at a congressional hearing is disruption of Congress.

Now, there is no evidence in the record that I intended anything but to respectfully and appropriately request to testify, which is what I did.

And that intent is clear as a bell stated over and again and most particularly in the 39-page May 21st fax to, to Capitol police, copies of which went to the Senate Judiciary Committee, to Senator Schumer, Senator Clinton.

[1328] Judge Holeman: What's your next point, Ms. Sassower?

Sassower: Okay. Again –

Judge Holeman: No.

Sassower: There is no sign at the Senate Judiciary Committee – don't even think about requesting to testify. There is no presentation of any rules or regulations as relates to requests to testify at a public hearing.

And there is no, there is evidence that I inquired as to the rules and procedures and none were forthcoming.

Finally, again critical to this charge is that when someone claims the right to speak in a public place, the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.

Again, we are talking about a public congressional hearing, hearing.

Judge Holeman: Very well.

Sassower: And –

Judge Holeman: Very well. I've heard Enough.

Sassower: -- consistent with the –

Judge Holeman: Please be seated.

[1329] Sassower: -- purpose of a hearing.

Judge Holeman: No, excuse me. We're done. Mr. Mendelsohn.

Mendelsohn: Your Honor, viewing the evidence in the light most favorable to the government, as the Court must do at this time, we believe the evidence more than sufficiently shows that a reasonable mind could find beyond a reasonable doubt that the defendant committed the offense of disruption of Congress on May 22nd 2003.

Judge Holeman: Very well. The standard for ruling on a

motion for judgment of acquittal, as I previously stated for the record, is set forth in Curley vs. United States, 81 U.S. App. D.C. 389, page 392, 160 F.2d 229, page 232. It's a 1947 case.

Simply put, the standard is as follows: If there is no evidence upon which a reasonable mind might conclude guilt beyond a reasonable doubt, the motion must be granted.

In reviewing the facts of this case in the light most favorable to the government, as the Court must do in such a motion, certainly there has been the presentation of evidence from which a reasonable fact finder could find guilt beyond a reasonable doubt.

On that basis, the motion for judgment of acquittal [1330] is denied.

[Appellant's Appendix: A-1720-1730]

Excerpt of Amended Transcript of June 28, 2004 Sentencing

[1720]

Judge Holeman: ...Ms. Sassower, I am ready to impose sentence.

Ms. Sassower: May I just add something, please?

[1721]

Judge Holeman: Very briefly.

Ms. Sassower: Yes. We are all familiar with what took place on May 7th with the Senate Armed Services Committee hearing at which Donald Rumsfeld testified because, among other things, there were protesters in the back that unfurled a banner and shouted out for Defense Secretary Rumsfeld to be fired.

What is not well known, at all, is that with their disruptive conduct, they were not arrested. Now it has come to my attention that not only were they not arrested for disruptive conduct, but apparently there have been other incidents at committee hearings where individuals have interrupted questioning, engaged in colloquy with witnesses while they were testifying, even to the extent of accusing a witness of being a state terrorist or so considered by the people of Honduras.

Judge Holeman: I'm ready to pronounce sentence.

Ms. Sassower: The point I'm trying to make is --

Judge Holeman: You've had ample opportunity to make your point.

Ms. Sassower: -- they were not arrested for --

Judge Holeman: Please be quiet.

Ms. Sassower: – conduct during a hearing.

Judge Holeman: Please be quiet. I'm about to impose sentence. Very well. Sentence will be as follows:
[1722]

Ms. Sassower, I'm sentencing you to 92 days; I'm going to give you credit for any time served in this case. I'm going to suspend execution as to all remaining time.

I will place you on two years probation. During the probationary term – well, let me back up then before I get into the probationary term.

You will pay a $500 fine, within 30 days of the sentencing date, so that's within 30 days of today.

You will pay $250 to the Victims of Violent Crimes Compensation Fund within 30 days of today.

Ms. Sassower: Who is the victim of the violent crime? Where is the violent crime?

Judge Holeman: It's a mandatory assessment, Ms. Sassower.

Ms. Sassower: I was told --

Judge Holeman: It's a mandatory assessment.

Ms. Sassower: But this is not a violent crime.

Judge Holeman: It doesn't matter. You're a convicted misdemeanant, be quiet while I complete this order.

Now general conditions of probation:

You will obey all laws, ordinances, regulations and incur no arrests for probable cause.

You will maintain appointments with your probation officer.

You will abstain from illegal drug use.
[1723] You will submit to a program of graduated sanctions that may include brief periods of residential treatment in the event of illegal drug use or other violations of conditions of probation.

You will notify your probation officer of any change

of your address within 48 hours.

You will obtain the permission of your probation officer if you plan to leave the jurisdiction of your residence for more than two weeks.

With regard to employment, for each year of your probation, there is a minimum 40-hour weekly requirement. You may maintain your current employment with the Center for Judicial Accountability, Inc., hereinafter referred to as CJA. If CJA employment is not a minimum of 40 hours per week, then you must pursue, obtain and maintain additional work to satisfy this employment requirement.

Since CJA is self-employment, you shall maintain daily time records containing a description of the task performed and the time expended. You will record, to the nearest tenth of an hour each entry; block time entries are not acceptable. Each time sheet must be signed by you to certify the accuracy of the information contained therein.

Community service. You will serve 300 hours of community service over this two-year term. Two hundred hours will be served in New York, convenient to your residence.

[1724] Court Services and Offender Supervision Agency, which I will refer to, hereafter as CSOSA, will approve eligible community service through its interstate office.

Twenty-five hours of every six-month period must be served in the District of Columbia. A listing of available programs in the District of Columbia is submitted herewith; you'll receive that list today.

Under no circumstance will CJA work or related activities satisfy this requirement. You will notify CSOSA of the organizations you've selected, the contact persons and information, the organization descriptions and your duties for those organizations.

Assessments. For every year of your probation, you will submit to substance abuse, medical and mental health assessments. Negative findings the first year will not excuse an assessment for the second year. You will comply with any testing or treatment regimen

determined appropriate by CSOSA or its reciprocal entity in New York.

Therapy. For every six-month period, you will undergo anger management therapy. The form, setting and duration of the anger management treatment during each six-month period will be determined by CSOSA or its reciprocal entity.

Stay-away. You will stay away from and inside of any of the buildings that collectively comprise the United States Capitol Complex; maps are provided herewith. **[1725]** The United States Capitol Complex consists of the United States Capitol Building, the Congressional Office Buildings, the U.S. Botanic Garden, the Capitol grounds, the Library of Congress Buildings, the Supreme Court Building, the Capitol Power Plant and any other unlisted support facilities.

This order covers generally, though not exclusively, the following topography:

D Street between Louisiana Avenue, N.W. and Third Street, N.E; C Street between Third Street, S.E. and Third Street, S.W.; Third Street between D Street, N.E. and C Street, S.E.; Third Street between D Street, N.W. and C Street, S.W.; Louisiana Avenue, N.W., between D Street, N.W. and Constitution Avenue; and Constitution Avenue between Third Street, N.E. and Third Street, N.W.

This is a general parameter surrounding the Capitol Complex. The specific buildings are identified as follows:

The United States Capitol, the Canon House Office Building, the Longworth House Office Building, the Rayburn House Office Building, the O'Neill House Office Building, the Ford House Office Building, the Russell Senate Office Building, the Dirksen Senate Office Building, the Hart Senate Office Building, the U.S. Botanic Garden, the Jefferson Library of Congress Building, the Adams Library of Congress Building, the Madison Library of Congress Building, the **[1726]** Supreme Court Building, the Capitol Power Plaint.

Ms. Sassower: Excuse me. May I say something?

Judge Holeman: No. Don't interrupt me again.

Ms. Sassower: Will I be able to speak afterwards?

Judge Holeman: Well, you may not. Be quiet while I complete this.

With regard to the prohibited area, there are two Metro locations that you are prohibited from accessing. One is Capitol South, the other is Federal Center, S.W.

All right, the stay-away not only pertains to physical location, but it also pertains to individuals. Except as permitted elsewhere, you will have no verbal, written, telephonic, electronic, physical or other contact with the following individuals or their respective staffs for the entire period of your probation:

Senator Hillary Rodham Clinton, Tamera Luzzatto, Leecia Eve, Josh Albert, Senator Charles Schumer, Michael D. Tobman, Senator Orrin Hatch, Senator Patrick Leahy, Senator Saxby Chambliss, Judge Richard Wesley, Officer Roderick Jennings, Special Agent Deborah Lippay, Detective William Zimmerman and Sergeant Kathleen Bignotti.

Now because Senators and Clinton and Schumer represent your home state, and New York is within Judge Wesley's appellate jurisdiction, the prohibited contact with these individuals would be limited to any references to [1727] giving rise to, resulting in, or consequent to, your arrests of June 25, 1996 and May 22, 2003. Any facially legitimate contacts may be scrutinized for cause and if found to be pretextual, will constitute a violation of your probation.

Finally, letters of apology. Within 30 days of today, you shall prepare and forward to Senators Hatch, Leahy, Chambliss, Schumer, Clinton and to Judge Wesley letters of apology which state the fact of your conviction for violation of D.C. Code Section 10-503.16(B)4 and your remorse for any inconvenience caused --

Ms. Sassower: I am not remorseful and I will not lie.

Judge Holeman: And your remorse for any inconvenience caused by your actions. Copies of these letters must be sent to me, the presiding judge.

Ms. Sassower: They will not be sent because they will not be written.

Judge Holeman: Be quiet. Any effort to communicate additional information will constitute a violation of your probation.

Now, Ms. Sassower, in this jurisdiction, when a convicted criminal is given probation --

Ms. Sassower: Wrongfully convicted.

Judge Holeman: When a convicted criminal is given **[1728]** probation, they must accept the probation. The question is very simple. Do you accept the terms of the probation as they have been expressed during my presentation to you?

Ms. Sassower, the answer is either yes or no. Do you accept the terms of probation as I have stated them to you?

(Pause.)

Ms. Sasower: I am requesting a stay of sentence pending appeal. This case will be appealed.

Judge Holeman: Ms. Sassower, the answer is yes or no. Do you accept the conditions of your probation?

Ms. Sassower: No.

Judge Holeman: Very well. Then, sentence is imposed as follows:

You are sentenced to six months incarceration.

You will pay, within 30 days, following your incarceration, $500 as the fine that attaches to the penalty – to the offense for which you've been convicted.

You will also pay, within 30 days, following your

incarceration, the $250 compensation – contribution to the Victims of Violent Crimes Fund.

Ms. Sassower, once again, your pride has gotten in the way of what could have been a beneficial circumstance for you. This incarceration begins forthwith; step her back.

The Deputy Marshal: Ma'am.
[1729]
Ms. Sassower: (Indiscernible) are uncomfortable.

The Deputy Marshal: Ma'am, come on.

The Deputy Clerk: The Court stands a brief recess.

(Thereupon, the proceedings were recalled.)

The Deputy Clerk: Recalling the United States versus Elena Sassower, M-4113-03.

Judge Holeman: Very well. Ms. Williams.

Ms. Williams: Amanda Williams for the Government, Your Honor.

Judge Holeman: Very well. Ms. Sassower, when we were last here, I failed to give you your – the notice of your right of appeal. You have the right to appeal your conviction. The time for filing of an appeal is within 30 days of the day of sentencing. The notice of appeal, which is the document that is used for that purpose, should be filed with the Court of Appeals on the 6th floor in this building. You can discuss it further with your attorney advisor, Mr. Goldstone, but I am giving you notice that your 30 day period for filing the notice of appeal begins to run today.

Ms. Sassower: Would Your Honor --

Judge Holeman: Thank you.

Ms. Sassower: -- consider staying sentence pending appeal?

[1730]

Judge Holeman: No. To do so would be to show you favorable treatment that I have not in the past shown any other convicted criminal defendant in this courtroom and I won't start that practice now. So you may step back.

Ms. Sassower: I want to just --

The Deputy Marshal: Let's go, ma'am.

Ms. Sassower: Could I speak with Mr. Goldstone?

The Deputy Marshal: Yes, ma'am, in the back.

(Thereupon, the proceedings were concluded.)

Petitioner's affidavit, handwritten June 29 - July 6, 2004, annexed as Exhibit C to her reargument/reconsideration motion to the D.C. Court of Appeals for release from incarceration pending appeal

DISTRICT OF COLUMBIA
COURT OF APPEALS

----------x

ELENA RUTH SASSOWER,

No. 04-CM-760

Appellant,

UNITED STATES OF AMERICA,

Appellee

----------x

Elena Ruth Sassower, being duly sworn, deposes and says:

1. I am the wrongfully convicted criminal defendant in a "disruption of Congress" case that exposes the corruption of federal judicial selection. Such involves directly Senate Judiciary Committee Chairman Orrin Hatch, Ranking Member Patrick Leahy, New York Home-State Senators Charles Schumer and Hillary Rodham Clinton, and Senator Saxby Chambliss, among others.

2. The material facts, including as to how my conviction was secured despite materially false and misleading prosecution documents, are set forth in my May 25, 2004 letter for inclusion in D.C. Court Services' Presentence Report. It is Exhibit "C" to my June 28, 2004 Affidavit Commenting upon and Correcting the May 28, 2004 Presentence Report and in Opposition to the U.S. Attorney's June 1, 2004 Memorandum in Aid of Sentencing. The pertinent substantiating documents to that letter are annexed to the Affidavit as Exhibits "D"-

"H". Of these, Exhibits "D"-"F" reflect the political reach of this case with respect to the corruption of federal judicial selection. They are:

> -- Exhibit "D": my two published Letters to the Editor in Roll Call (5/10/04) and the New York Law Journal (5/19/04).
>
> -- Exhibit "E": the draft of my intended opening statement at trial (4/14/04);
>
> -- Exhibit "F": my June 16, 2003 memo to Ralph Nader, Public Citizen, and Common Cause.

3. This application, written from jail, is for a stay pending appeal, of the vindictive and retaliatory 6-month sentence imposed upon me by D.C. Superior Court Judge Brian Holeman – a judge whose pervasive, actual bias in "protecting" the government was so severe and prejudicial pretrial as to have compelled me to seek from this Court a writ of mandamus/prohibition for his disqualification, which I did on April 6, 2004, accompanied by an application to stay the April 12, 2004 scheduled trial.

4. This Court deferred adjudication to the appeal as to whether my two motions for Judge Holeman's disqualification, dated February 23, 2004 and March 22, 2004, were sufficient, as a matter of law, to have required him to "proceed no further" and, indeed, had met the "impossibility of fair judgment" standard articulated by the U.S. Supreme Court in Liteky.

5. The sufficiency of these fact-specific, documented motions in establishing my entitlement to Judge Holeman's disqualification pretrial will be the threshold issue on appeal – to be followed by a comparably fact-specific, documented showing of Judge Holeman's subsequent misconduct – all replicating and

exacerbating his pretrial pervasive bias and reinforcing my entitlement to the granting of those two motions, as well as to the myriad of oral motions I thereafter made for his disqualification.

6. There is no more serious charge against a judge than that he has jettisoned his duty to render fair and impartial justice for ulterior political and personal reasons. Especially is this so where the result of such misconduct is, as here, the incarceration of a completely innocent person.

The Sentence

7. The 6-month jail sentence imposed by Judge Holeman is not only unsupported by the record and unprecedented, but its improper political motivation is revealed by the conditions of probation Judge Holeman attached to the 92-day jail sentence he originally announced.

8. As to the record, both the D.C. Court Services' Presentence Report and the U.S. Attorney's Memorandum in Aid of Sentencing recognized that I was not remorseful, contrite, and did not acknowledge any "wrongdoing". Even still, the recommendation of the Presentence Report was not jail, but "community service" and/or "fine". The U.S. Attorney's recommendation was "five days of incarceration, all suspended, and six months of probation conditioned on completion of an anger-management course." In other words, a judge who is supposed to be fair and impartial and guided by the record, has imposed a 6-month jail sentence 36 times that deemed appropriate by my adversary.

9. Judge Holeman gave no reason for the 6-month jail sentence – except for what he termed my "pride" after I stated I would be unable to write a letter of apology and contrition to the Senators and to Judge Wesley, the federal judicial nominee against whom I had requested to testify based on his documented corruption

as a New York Court of Appeals judge. Such letter was one of the conditions Judge Holeman had imposed for suspending his originally announced 92-day sentence – a condition he knew, based on the record, I would be unable to satisfy. Indeed, from the long list of conditions he attached to probation and especially his direction that I submit signed daily time records to him, accurate to 1/10 hour increments, attesting to my self-employment as coordinator of the Center for Judicial Accountability, Inc. (CJA) – with an express warning that block entries would not be acceptable – it may fairly be interpreted that he was laying the grounds to subsequently arrest me for violation of probation.

In any event, for my honesty with respect to the letter, Judge Holeman upped the 92-day sentence to 6 months, ordering it to commence immediately.

10. Notwithstanding the record showed no basis for my immediate incarceration, such that its propriety and the lawfulness of my conviction could not first be tested by the appellate process, Judge Holeman denied my request for a stay pending appeal. In so doing, he made no claim that he believed that either my conviction or his sentence could stand on appeal. As he knew from his profound due process violations of my rights – such as reflected by my May 25, 2004 letter for inclusion in the Presentence Report – they cannot.

11. Moreover, there is no precedent for Judge Holeman's draconian 6-month jail sentence and $500 fine – each the maximum allowable under the "disruption of Congress" statute. Indeed, the record showed that there had never been a "disruption of Congress" case against a citizen for respectfully requesting to be permitted to testify at a public congressional hearing, let alone, as here, where the hearing was already adjourned. Rather, as I highlighted to Judge Holeman immediately before sentencing, there appeared to be a practice of not arresting citizens at committee hearings, even for conduct

that was disruptive and provocative. I cited 3 incidents – 2 within the previous 9 weeks. These were:

> (a) the most familiar: the May 7, 2004 Senate Armed Services Committee hearing at which 8 protestors unfurled a banner "FIRE RUMSFELD" and shouted out for him to be fired;
>
> (b) An April 27, 2004 Senate Foreign Relations Committee hearing at which Andres Thomas Conteras interrupted the questioning of John Negroponte to be U.S. ambassador to Iraq to interject his own comment;
>
> (c) A September 13, 2001 Senate Foreign Relations Committee hearing at which Andres Thomas Conteras, holding a small sign, interrupted the questioning of John Negroponte to be U.S. ambassador to the U.N. telling him that the People of Honduras considered him a "state terrorist."

12. Upon information and belief, in each of these instances, the presiding chairman had declined to authorize an arrest – for which reason none was made. The record before Judge Holeman reflected that it was unclear whether, as identified in the underlying prosecution documents, Senator Saxby Chambliss, presiding chairman at the Senate Judiciary Committee's May 22, 2003 "hearing" on Judge Wesley's confirmation, was, in fact, the complainant. Judge Holeman thwarted pretrial discovery on that, as on every other, issue and improperly quashed my subpoena for Senator Chambliss' testimony at trial. Senator Chambliss did not himself come forward to testify to support the prosecution against me and, upon my conviction, did not come forward – as he was expressly requested to do by my May 28, 2004 and

June 24, 2004 memoranda[1] – with any statement, including as to what jail time he deemed appropriate for such "concocted 'crime'" of which I had been convicted.

13. The record also showed that none of the Senators – Hatch, Leahy, Schumer, and Clinton – would respond to this question as to how much jail time they deemed appropriate. They, like Senator Chambliss, would not take the opportunity I provided them by my May 28, 2004 and June 24, 2004 memoranda to deny or dispute the relevant facts set forth by my two published Letters to the Editor in Roll Call and the New York Law Journal "corroborative of my innocence." This includes as to the significance of the "paper trail" of my correspondence with them, posted on the homepage of CJA's website, www.judgewatch.org. Like Senator Chambliss, they, too, had not come forward to testify against me at trial, and Judge Holeman had quashed my subpoenas for their testimony.

14. That the Senators never requested an apology, let alone attested to any injury for which an apology was warranted – and the record furnishes no basis for giving an apology – underscores the inappropriateness of the very ground upon which Judge Holeman imposed the maximum 6-month jail sentence – my refusal to write a letter of apology. Indeed, had the Senators and Judge Wesley been "victims" of a crime for which an apology was in order, the Presentence Report would have included a "Victim Impact Statement." Instead, the Presentence Report identified that a "Victim Impact Statement" is "not applicable."

15. Neither the Presentence Report nor the U.S. Attorney's Memorandum in Aid of Sentencing proposed that I write letters of apology. This condition

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1 Handed up to Judge Holeman at the June 28, 2004 sentencing and annexed as exhibits to my June 28, 2004 Affidavit. (Exhibits "K-1", "L-1")

for suspending the original 92-day sentence was entirely Judge Holeman's own.

The Originally Announced Sentence

16. Judge Holeman's originally announced 92-day sentence was itself 18 times the U.S. Attorney's recommended 5 days and his 2-year probation period for suspending 90 of those days was 4 times the U.S. Attorney's 6-month recommendation.

17. The U.S. Attorney's Memorandum in Aid of Sentencing specified no conditions to probation except for completion of a course in anger management. Notwithstanding the baselessness of this condition was exposed by my June 28, 2004 Affidavit in Opposition, it was adopted by Judge Holeman.

18. As for Judge Holeman's long list of other conditions for suspending the 90-day jail sentence, all were his own, were irrelevant to the "disruption of Congress" charge, and had no basis in the record. Their inclusion was to degrade and harass me, including by intruding on my employment as coordinator of the Center for Judicial Accountability, Inc. (CJA) to the point of surveillance and to prevent me from discharging my professional duties by appropriate First Amendment petitioning of the Senators in matters pertaining to the corruption of federal judicial selection and discipline.

19. Although the "disruption of Congress" charge was not based on any harassing, stalking, violent, threatening or intimidating conduct – and the record was devoid of any such conduct on my part – Judge Holeman included among the conditions of the 2-year probation:

> (a) that I have no verbal, electronic, or written contact with the 9 senators and Senate staffers whose trial testimony I had sought by subpoena, as well as the 4 police officers who

testified against me – with some relaxation of the prohibition as to Home-State Senators Schumer and Clinton (but none as to the other senators who, as members of the Senate Judiciary Committee and its leadership, I would have reason to contact in connection with my work as CJA's coordinator;

(b) that I stay away not only from the Senate Judiciary Committee and the 2-3 block radius that was the prescribed condition for my release on my own recognizance at my May 23, 2003 arraignment, but from the entire Capitol complex of all Capitol buildings and grounds, indicated on a map to be provided and encompassing the Library of Congress, Supreme Court, Capitol Power Plant, etc.

(c) that I stay away from Judge Wesley

(d) that I pay $250 to the Victims of Violent Crimes Compensation Fund.

20. Although the record showed that I had a secure job as coordinator of CJA – which I had co-founded – and had answered Judge Holeman's inquiry at the sentencing as to how many hours I worked in that position by stating "24/7", citing the prodigious, quality workproduct that was before him – he ordered that I work 40 hours a week minimum, that I get other work if I did not keep that job, and required that I submit to him daily signed time records to 1/10 hour, as to which he expressly warned that block entries would be unacceptable.

21. Although the record showed that my "24-7" work as CJA's coordinator constituted (full-time) "community service" – and I so stated in my June 28, 2004 Affidavit and at sentencing – Judge Holeman ordered that I perform a substantial 300 hours of

community service – 200 in New York, and 100 in Washington, D.C. – expressly stating that additional hours of work at CJA beyond the 40 hours minimum would not satisfy the "community service" requirement. As I recall, Judge Holeman identified no provision to cover my traveling, food, and lodging expenses for the 100 hours of community service in D.C.

22. Although there was nothing in the record that would constitute a basis for requiring me to submit to medical, mental health, and drug screening and comply with testing and screening, this was ordered by Judge Holeman, as likewise that I notify the probation officer if I left the jurisdiction for more than two weeks.

23. As to Judge Holeman's requirement that I write a letter of apology, I do not know that this was the last of his conditions. It was simply the one to which I stated I would be unable to comply, thereby aborting any further recitation from him of additional conditions for probation.

STANDARDS FOR GRANTING THE STAY

24. This application fully meets the standard for granting a stay of the sentence pending appeal: (a) likelihood of success on the merits of the underlying appeal; (b) irreparable injury if the stay is not granted; (c) a stay would not substantially harm other interested parties; (d) a stay would serve the public interest.

A: Likelihood of Success on the Merits

25. The threshold issue to be raised on appeal is Judge Holeman's pervasive actual bias, meeting the "impossibility of fair judgment" standard of Liteky for which I was entitled to his disqualification pretrial. The likelihood of success on appeal is absolute – as may be seen from the most cursory inspection of my February 23, 2004 and March 22, 2004 motions for Judge Holeman's

disqualification and the substantiating record on which they are based – full copies of which were transmitted to this Court on April 6, 2004 when I filed my petition for a writ of mandamus/prohibition. Judge Holeman's factually false and legally insupportable disposition of the March 22, 2004 motion is discussed at the outset of the petition. Thereafter, on or about April 7 or 8, 2004, Judge Holeman adjudicated that branch of the March 22, 2004 motion relating to his disqualification which he had not done previously. In so doing, he demonstrated that he had NO DEFENSE to what was therein particularized as to his disqualifying conduct meeting the "impossibility of fair judgment" pervasive bias standard of Liteky. Indeed, his order denying disqualification not only did not cite Liteky, but sub silentio defied and repudiated it by asserting that only extrajudicial conduct could be disqualifying – a proposition Liteky expressly disavowed.

26. The pivotal document underlying my February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification is my October 30, 2003 motion to enforce my discovery rights, the prosecution's disclosure obligations, and for sanctions. Its examination makes obvious that any fair and impartial tribunal would have thrown out this case on the papers. This, not only because the uncontradicted record on the motion was that the underlying prosecution documents were knowingly false and misleading, but because the record established that prosecutorial misconduct infused and tainted the proceeding from its inception – and rose to a level of fraud on the court in the U.S. Attorney's opposition to my October 30, 2003 motion, as, likewise, in its December 3, 2003 motion in limine.

27. Judge Holeman's insupportable eve-of-trial and at-trial rulings directly flowed from his cover-up, dishonest dispositions of my October 30, 2003 motion and the U.S. Attorney's December 3, 2003 motion in limine, "protecting" the government. This includes:

(a) his granting of Senate Legal Counsel's fraudulent March 26, 2004 motion to quash my subpoenas for the testimony of the Senators – including Senator Saxby Chambliss, purported to be the complainant by the underlying prosecution documents;

(b) barring me from introducing into evidence the underlying prosecution documents;

(c) barring me from introducing into evidence or even mentioning that the true arresting officer, concealed by the underlying prosecution documents, had been the subject of a September 22, 1996 police misconduct complaint which I filed against her and other officers, arising from their June 25, 1996 arrest of me in the hallway outside the Senate Judiciary Committee on a trumped-up disorderly conduct charge;

(d) barring me from introducing into evidence or even mentioning the basis for CJA's opposition to Judge Wesley's confirmation to the Second Circuit Court of Appeals;

(e) barring me from even mentioning the "blue slip" prerogative of New York Home State Senators Schumer and Clinton, by which they could have encumbered, if not blocked, Judge Wesley's confirmation.

28. These and other reversible errors are summarized by my May 25, 2004 letter for inclusion in the Presentence Report – none more immediately reversible than Judge Holeman's refusal to allow me to testify from the witness stand as to the events of May 19-22, 2003 pertaining to my arrest, including as to what took place at the Senate Judiciary Committee's May 23, 2003 "hearing" to confirm Judge Wesley's nomination – the pretext for my arrest.

29. In addition to the overarching issue of Judge Holeman's disqualifying actual bias – pre-trial, at trial, and in connection with the sentencing – I will be raising other meritorious issues decisive of my right to reversal as a matter of law. Among these:

(a) My entitlement to change of venue, including removal to the U.S. District Court for the District of Columbia pursuant to the venue provision of the "disruption of Congress" statute. The strength of this issue may be seen from Judge Holeman's dishonest disposition with respect thereto, as particularized by my March 22, 2004 disqualification motion – and encompassed by my April 6, 2004 petition to this Court for review of the venue issue by certiorari and/or certification of questions of law.

(b) The unconstitutionality of the "disruption of Congress" statute, as written and as applied. The strength of this challenge may be seen from my "Memo in Progress to be Submitted in Support of a Motion to Stay Sentence Pending Appeal and on the Appeal" – which I had intended to hand-up to Judge Holeman at the June 28th sentencing. A copy is annexed (Exhibit "A").

The memo largely rests on a quote from the U.S. Supreme Court in Grayned that in restricting First Amendment rights

> "the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."

Such quote came to my attention through Judge Holeman himself when he presented me and the

U.S. Attorney with his already-signed "Elements of the Offense", where the quote was cited with an attribution to this Court's decision in Armfield.

From such quote, it should have been obvious to Judge Holeman that, as a matter of law, "a citizen's respectful request to testify at a public congressional hearing is not – and must never be deemed to be – 'disruption of Congress'" – and certainly not in the case at bar. I so-argued throughout my trial and, I believe, as part of my dismissal motions which Judge Holeman denied.

Also annexed (Exhibits "B" and "C") in substantiation of the unconstitutionality of the statute as applied – are affidavits from persons involved in the disruptive and provocative incidents at Senate Committee hearings, to which I referred at the sentencing to show that such persons were not arrested for conduct that clearly fell within the statute, whereas I was arrested for conduct that did not.

B: Irreparable Injury If The Stay Is Not Granted

30. Whereas the payment of the $500 fine can be reimbursed upon the Court's vacatur/reversal of the conviction, there can be no recompense for the time spent in jail. Every moment in jail is an unpleasant, punishing experience – representing an extreme of deprivation. Six months is a substantial sentence – a sizable chunk of my life that can never be restored.

31. The 6 month jail sentence also irreparably injures those who love and depend on me. My father is 80, lives alone, and is in fragile and failing health. I live around the corner from him and am his immediate,

primary caregiver, daily responsible for taking him to medical appointments, food shopping, shuttling to the library and wherever else he needs to go. This 6-month jail sentence has very real life-threatening consequences for him, as it does – albeit to a lesser extent – for my mother, nearing her 72nd birthday.

C: A Stay Would Not Substantially Harm Other Interested Parties

32. My release pending appeal poses no harm to other interested parties. This may be seen from the fact that D.C. Court Services' Presentence Report did not recommend jail, the U.S. Attorney's Memorandum in Aid of Sentencing recommended a 5-day suspended sentence, and even Judge Holeman's initial sentence was to suspend 90 days of the 92-day jail sentence – with the remaining two days credited for time served.

33. Obviously, too, if I posed harm to interested parties, I would not have been released on my own recognizance at the May 23, 2003 arraignment, nor have been permitted to remain free following the April 20, 2004 conviction.

34. The record shows that I am a conscientious, civic-minded, law-abiding person, that my conduct meets the highest professional and ethical standards, and that there is not the slightest basis for keeping me locked up for 6 months pending reversal of my wrongful arrest, conviction, and sentencing – the inevitable result of the appeal.

D: A Stay Would Serve The Public Interest

35. The public interest is served by justice – for which an appellate process has been fashioned. It offends the public interest to incarcerate a person who has not only presented readily-verifiable evidence that her conviction was engineered by a pervasively biased,

politically motivated judge, but readily-verifiable evidence that she is actually innocent.

36. The D.C. Court Services' Presentence Report is highly favorable to me. It identifies my life's work as dedicated to advancing the public interest in judicial accountability – which I do by working to ensure that the processes of judicial selection and discipline are effective and meaningful. Such further warrants a stay pending appeal so that I might return to that imperatively-needed public interest work without which justice is, as here, totally absent.

s/ Elena Ruth Sassower
drafted from June 29, 2004 - July 6, 2004

Sworn to before me
this 16th day of July 2004

_____s/_____
Notary public

Petitioner's draft memorandum of law as to the unconstitutionality of the disruption of Congress statute, *as written and as applied*, annexed as Exhibit D to her reargument/reconsideration motion to the D.C. Court of Appeals for release from incarceration pending appeal

ELENA SASSOWER'S MEMO IN PROGRESS
To Be Submitted in Support of a Motion to Stay Sentence Pending Appeal
& on the Appeal

D.C. Code §10-503.16(b)(4) is unconstitutional, *as written and as applied*

The Statute is Unconstitutional as Written

Thirty-two years ago, in *Grayned v. City of Rockford*, 408 U.S. 104 (1972), thereafter cited in relevant decisions of the District of Columbia Court of Appeals[1], the United States Supreme Court articulated the standard by which speech and expressive conduct in public places might be restricted, consistent with the First Amendment:

> "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." (at 116).

This "crucial question" makes obvious that a citizen's respectful request to testify at a public congressional hearing – as at bar -- cannot be prosecuted under D.C.

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[1] In reverse chronological order, these include: *Armsfield v. United States*, 811 A.2d 792, 796 (2002); *Berg v. United States*, 631 A.2d 394, 398 (1993); *Farina v. United States*, 622 A.2d 50, 56 (1993); *Wheelock v. United States*, 552 A.2d 503, 506 (1988); *Carson v. United States*, 419 A.2d 996, 999 (1980); *District of Columbia v. Gueory*, 376 A.2d 834, 837 (1977); *Leiss v. United States*, 364 A.2d 803, 806, 808 (1976).

Code §10-503.16(b)(4). Quite simply, such request is compatible with the "normal activity" of a public congressional hearing, *to wit*, the taking of testimony, including from members of the public.

The essential and necessary role of citizen participation in this "normal activity" as relates to the Senate Judiciary Committee's public hearings to confirm federal judicial nominees – at issue herein – is reflected in the record[2]. It contains references to, and quotes from, a variety of sources: the 1986 Common Cause report, Assembly-Line Approval, the 1988 Twentieth Century Fund book, Judicial Roulette, as well as the 1975 book by the Ralph Nader Congress Project, The Judiciary Committees, whose chapter, "*Judicial Nominations: Whither 'Advice and Consent'?*", describes a confirmation hearing at which the presiding chairman inquired "if anyone in the room wished to speak on behalf of or against the nominee" (at p. 234) – a hearing not represented to be atypical in that -- or any other -- respect.

[p. 2] From *Grayned*, it is clear that D.C. Code §10-503.16(b)(4) is unconstitutional, *as written* – being both vague and overbroad. As to vagueness, the Court in *Grayned* stated:

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws

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2 See Elena Sassower's May 21, 2003 fax to Senate Judiciary Chairman Hatch and Ranking Member Leahy – which is also part of her 39-page May 21, 2003 fax to U.S. Capitol Police Detective Zimmerman. [posted on CJA's homepage under the heading "Paper Trail Documenting the Corruption of Federal Judicial Selection/Confirmation & the 'Disruption of Congress' Case it Spawned."]

> give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.[fn. 3] Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.[fn. 4] A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.[fn. 5] Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,'[fn. 6] it 'operates to inhibit the exercise of those freedoms.'[fn. 7] Uncertain meanings inevitably lead citizens to "steer far wider of the lawful zone'...than if the boundaries of the forbidden areas were clearly marked.'[fn. 8]" (at 108).

Whereas the anti-noise statute upheld in *Grayned* involved noise "adjacent" to a school while in session – in other words, was explicitly restricted to a single "particular place at a particular time" -- D.C. Code §10-503.16(b)(4) is not narrowly-tailored to a public congressional hearing. Rather, it reads as follows:

> "(b) It shall be unlawful for any person or group of persons willfully and knowingly:
>
> * * *
>
> (4) To utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings, with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any deliberations of, any

committee or subcommittee of the Congress or either House thereof."

It thus combines more than a single "particular place at a particular time". More significantly, it combines places having divergent "normal activity". Whereas the "normal activity" of the sessions of Congress and either House, as likewise their committee/subcommittee deliberations, consists of communications between and among [p. 3] the members of these bodies – with the public having no role[3] – not so a public committee/subcommittee hearing. There, the "normal activity" is the taking of testimony from non-members of Congress – frequently members of the public.

Evident from *Grayned* is that the facial unconstitutionality of D.C. Code §10-503.16(b)(4) by its combination of places with disparate "normal activity" is exacerbated by the absence of any interpretive caselaw. Indeed, neither the District of Columbia Court of Appeals' decision in *Smith–Caronia v. United States*, 714 A.2d 764 (1998), upholding the constitutionality of the language that has since been recodified as D.C. Code §10-503.16(b)(4), nor its decision in *Armfield v. United States*, 811 A.2d 792 (2002), resting thereon, have anything to do with committee/subcommittee hearings – or any conduct which, as here, would be compatible with same. *Smith-Caronia* and *Armfield* involved disruptive conduct in the galleries of the Senate and House, while in session -- which, had it been committed during a committee/subcommittee hearing, might also have been deemed disruptive[4]. Those cases, because they deal with

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[3] "The public is admitted to the gallery to observe, nothing more", *Smith-Caronia*, 714 A.2d 764, 765 (1998).

[4] That there is a VERY subjective standard as to what is disruptive at Committee hearings is dramatically demonstrated by the fact that the protestors at the May 7, 2004 Senate Armed Services hearing, who unfurled a banner "FIRE RUMSFELD" and similarly shouted out, were NOT ARRESTED for "disruption of Congress" -- as would have objectively been expected. Nor does this appear to be

conduct in the galleries where citizens are invited only to observe, never participate, do not control and have little to do with the constitutional challenge to D.C. Code §10-503.16(b)(4) here presented, arising from a public congressional hearing.

Obvious too, is that under *Grayned*, a respectful request to testify, by definition, is not a "disturbance" or "disruption" because it is compatible with the "normal activity" of a public congressional hearing – and that, once the hearing was adjourned, its "normal activity" had ceased. As such, there could be no "actual or imminent interference with the 'peace or good order'" thereof (at 112)[5].

[p. 4] As to unconstitutionality for overbreadth, it was in this context that the Court in *Grayned* stated:

> "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." (at 116).

Indeed, the Court's phrase as to the "crucial question"

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unique. Two weeks earlier, on April 27, 2004, a protestor interrupted the Senate Foreign Relations Committee hearing to confirm John Negroponte to be Iraq ambassador, by objecting to his response to a question. He, too, was NOT ARRESTED. Indeed, this same protestor was also NOT ARRESTED after he interrupted a September 13, 2001 Senate Foreign Relations Committee hearing to confirm Mr. Negroponte to be U.S. ambassador to the United Nations by holding a small sign and telling Mr. Negroponte that "the People of Honduras consider you to be a State terrorist".

[5] This "actual or imminent interference' standard was incorporated into D.C. Code §10-503.16(b)(4) in *Smith-Caronia*, where the D.C. Court of Appeals quoted its decision in *District of Columbia v. Gueory*, 376 A.2d 834 (1977), "sustain[ing] against First Amendment challenge an almost identically worded Commissioner's Order". *Gueory* (at 837) not only relies on *Grayned* for the proposition of "actual or imminent interference", but makes clear (at 839) that "normal activity" cannot be actually or imminently disturbed unless it is in progress, in other words, not adjourned.

was a repetition of its more particularized comment:

> "A clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct. [fn.27] ... overbroad laws, like vague ones, deter privileged activity... The crucial question, then, is whether the ordinance sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments." (at 114-115).

A respectful request to testify at a public congressional hearing – particularly, at a Senate Judiciary Committee "hearing" to confirm a "lifetime" federal judicial nominee – cannot be other than "constitutionally protected conduct", squarely within First Amendment free speech and petition rights.

The Statute is Unconstitutional as Applied

The instant case is unprecedented. No decisions have been located with any facts remotely ressembling those at bar: a citizen arrested and prosecuted under the statutory provision that is now D.C. Code §10-503.16(b)(4) for respectfully requesting to testify at a public congressional hearing, where, additionally, the request is made after the hearing has been "adjourned".

Precisely because the facts of this case do not support a prosecution under D.C. Code §10-503.16(b)(4), they were concealed and falsified by the U.S. Capitol Police in materially false and misleading prosecution documents in which the U.S. Attorney was complicitious. Such concealment and falsification is established by the videotape of the Senate Judiciary Committee's May 22, 2003 "hearing" and is further buttressed by defendant's "Paper Trail" of documentary proof, most specifically, by her 39-page May 21, 2003 fax to U.S. Capitol Police and her May 28, 2003 memo to Senate Judiciary Committee

Chairman Hatch and Leahy[6].

[p. 5] The U.S. Attorney never came forward with any decisional law c[r]iminalizing what the videotape and substantiating "Paper Trail" evidentiarily establish -- a citizen's respectful request to testify at a public congressional hearing, made after the hearing's adjournment. Nor did the U.S. Atttorney make any production with respect to the very first item in defendant's August 12, 2003 First Discovery Demand for:

> "(1) Any and all records of arrests by Capitol Police of members of the public for requesting to testify in opposition to confirmation of federal judicial nominees at Senate Judiciary Committee hearings -- particularly where the arrestee was charged with 'disruption of Congress' (10 D.C. Code Section 503.16(b)(4))"[7].

Indeed, the precedent for U.S. Capitol Police's handling of a citizen's respectful request to testify at a Senate Judiciary Committee confirmation "hearing", such as here at issue, was supplied by defendant herself: the Committee's June 25, 1996 confirmation "hearing" at which, prior to adjournment, defendant had risen to respectfully request to testify with "citizen opposition". She was neither arrested nor even removed from the hearing room.

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[6] This was highlighted at pages 7-20 of defendant's October 30, 2003 motion to enforce her discovery rights, the prosecution's disclosure obligations and for sanctions. Judge Holeman's profound dishonesty with respect to this motion was the basis for defendant's February 23, 2004 and March 22, 2004 motions for his disqualification, leading to her April 6, 2004 petition for a writ of mandamus/prohibition against him.

[7] The prosecution's non-production with respect to this first item, as likewise with respect to virtually every other item of the August 12, 2003 First Discovery Demand, was the subject of defendant's October 30, 2003 motion to enforce her discovery rights, the prosecution's disclosure obligations, and for sanctions.

The record of this case establishes each of the three aspects, cited by the Court in *Grayned*, for which a law may be stricken for vagueness:

Firstly, D.C. Code §10-503.16(b)(4) is plainly an impermissible "trap [for] the innocent". There is nothing in its generic language that would lead "a person of ordinary intelligence" to believe that a respectful request to testify at a public congressional hearing – made at an appropriate point of the hearing -- is prohibited conduct. Indeed, reflecting defendant's good-faith, reasonable belief as to what was permissible is her 39-page May 21, 2003 fax to U.S. Capitol Police[8] – also sent to Senate Judiciary Committtee Chairman Hatch and Ranking Member Leahy, and New York Home-State-Senators **[p. 6]** Schumer and Clinton. Such fax presented her contention, based on prior Senate Judiciary Committee precedent cited in the 1975 book of The Ralph Nader Congress Project, that the presiding chairman at the May 22, 2003 hearing could and should inquire whether anyone present wished to testify and that, if he did not, she had "a citizen's right in a democracy to peaceably and publicly request to testify in opposition". None of the recipients of the May 21, 2003 faxes denied or disputed this – let alone responded that she would be liable for arrest and prosecution if she made such respectful request – and that D.C. Code §10-503.16(b)(4) would furnish a legal basis therefore.

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[8] Defendant's 39-page May 21, 2003 fax consists of her 2-page covermemo to Detective Zimmerman, followed by (1) her 2-page May 21, 2003 memorandum to Chairman Hatch and Ranking Member Leahy; (2) her 4-page May 21, 2003 letter to Home-State Senator Schumer; and (3) her 1-page May 21, 2003 fax letter to Home-State Senator Clinton. There is also a fourth component part, defendant's 18-page July 3, 2001 letter to Senator Schumer. All are posted on CJA's homepge under the heading "Paper Trail Documenting the Corruption of Fderal Judicial Selection/Confirmation & the 'Disruption of Congress' Case it Spawned".

Certainly, if such respectful request warranted arrest under D.C. Code §10-503.16(b)(4), defendant should have been arrested at the June 25, 1996 hearing for her respectful request to testify with "citizen opposition". That she was not only reinforced defendant's good-faith, reasonable belief as to the lawfulness of any similar request as she would make at the May 22, 2003 "hearing" -- and here too the recipients of the May 21, 2003 faxes did not respond to the contrary.

Secondly, D.C. Code §10-503.16(b)(4) lends itself to arbitrary and discriminatory enforcement by its failure to "provide explicit standards for those who apply [it]." This is evident from comparison of incidents of protestors disrupting "hearings" in-progress – NONE OF WHOM WERE ARRESTED: (1) the eight or nine protestors at the May 7, 2004 Senate Armed Services Committee hearing, who unfurled a banner "FIRE RUMSFELD" and similarly shouted out; (2) the protestor at the April 27, 2004 Senate Foreign Relations Committee hearing to confirm John Negroponte as ambassador to Iraq, who objected to Mr. Negroponte's response to a question; and (3) this same protestor, in September 13, 2001, interrupting a Senate Foreign Relations Committee hearing to confirm Mr. Negroponte to be U.S. ambassador to the United Nations by holding a small sign and telling Mr. Negroponte that "the People of Honduras consider you to be a State terrorist". Each of these incidents was disruptive – in contrast to what defendant did in respectfully requesting to be permitted to testify in opposition to Judge Richard Wesley's confirmation to the Second Circuit Court of Appeals – which she did not do until the presiding chairman had already adjourned the Senate Judiciary Committee's May 22, 2003 confirmation "hearing". Such palpably selective arrest and prosecution of defendant is precisely the kind of arbitrary, discriminatory, disparate treatment that runs afoul of the equal protection guarantees of our Constitution.

Tellingly, the U.S. Attorney supplied NO documents in response to the second item in defendant's August 12, 2003 First Discovery Demand for

> "(2) Any and all documents pertaining to the protocol and/or guidelines of Capitol Police for responding to 'disruptive' conduct by members of the public and for evaluating when arrest is appropriate",

except for a copy of D.C. Code §10-503.16 itself.

[p. 7] Yet, the "lack of explicit standards" in D.C. Code §10-503.16(b)(4) was evidenced at trial by the testimony of the two police officers at the Senate Judiciary Committee's May 22, 2003 "hearing": Officer Jennings, purported to be the "arresting officer" by the underlying prosecution documents, and Sergeant Bignotti, the true arresting officer. On cross-examination, Officer Jennings not only conceded that it was Sergeant Bignotti who had arrested defendant, but testified that his response to defendant had not been – as Sergeant Bignotti's was – to order her from the hearing room, but, rather, to tell her to sit down. Since their testimony as to defendant's conduct did not materially diverge, their incompatible responses as to whether defendant's arrest was warranted must be attributed to the "lack of explicit standards" of D.C. Code §10.503.16(b)(4). At bar, such permitted Sergeant Bignotti to give reign to her vindictive, personal *animus* against defendant for filing a police misconduct complaint against her in 1996, based on her role in defendant's arrest in the hallway outside the Senate Judiciary Committee on June 25, 1996 on a trumped-up "disorderly conduct" charge[9]. Such was over and beyond any directive Sergeant Bignotti may have received, as the senior officer assigned, from Capitol

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9 This was particularized at pages 19-20 of defendant's October 30, 2003 motion to enforce her discovery rights, the prosecution's disclosure obligations, and for sanctions.

Police and/or the Senate Judiciary Committee to arrest defendant – an arrest whose retaliatory purpose could easily be concealed within the vague, overbroad language of D.C. Code §10.503.16(b)(4).

Third, D.C. Code §10-503.16, as applied, unconstitutionally "abut[s] upon sensitive areas of basic First Amendment freedoms", because it has sustained an arrest, prosecution, and conviction of a defendant who not only did nothing more than respectfully request to testify with "citizen opposition" at the Senate Judiciary Committee's May 22, 2003 "hearing", but where the record shows that her opposition testimony would have exposed not only Judge Wesley's "documented corruption" as a New York Court of Appeals judge, but the official misconduct of Home-State Senators Schumer and Clinton and the Committee's leadership under Chairman Hatch and Ranking Member Leahy with respect thereto. As the "Paper Trail" of evidence establishes, these Senators were motivated to intimidate and arrest defendant lest her appearance at the "hearing" and publicly-made request to testify pierce the Senators' "insulation" from culpability afforded by the staff underlings, whose misfeasance she had so resoundingly documented. Indeed, the videotape suggests that such motive was actualized: as defendant was plainly "set up" to be arrested[10].

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10 *See*, the last two pages of defendant's analysis of the video, posted at the top of CJA's homepage. Such is taken from her July 7, 2003 memo to the American Civil Liberties Union, analyzing the underlying prosecution documents [posted under the "Paper Trail"].

Final pages of POINT I of Petitioner's June 28, 2005 brief (pp. 94-101): Judge Holeman's pervasive actual bias – post-trial

1-B JUDGE HOLEMAN'S POST-TRIAL RULINGS ARE FURTHER CONFIRMATORY OF HIS PERVASIVE ACTUAL BIAS & ARE FACTUALLY AND LEGALLY INSUPPORTABLE

Judge Holeman's June 28, 2004 Sentencing of Sassower

This Court has recognized that there are circumstances where a trial judge's sentencing of a defendant gives rise to "a presumption of vindictiveness" – and that in such circumstances, the reasons for the sentence "must affirmatively appear" in order for the **[p. 95]** presumption to be rebutted, *Johnson v. United States*, 628 A.2d 1009, 1012 (1993), quoting *North Carolina v. Pearce*, 395 U.S. 711, 726 (1969).

At bar, the circumstances of Sassower's sentencing gave rise to a "presumption of vindictiveness" by Judge Holeman. Pretrial, Sassower had twice moved for his disqualification [A-265, 375], had repeatedly sought supervisory oversight from supervisory judges and administrative personnel [A-426, 435, 454], had stated her intention to file a judicial misconduct complaint against him, irrespective of the outcome of the trial [A-435, 383], had brought a mandamus/prohibition proceeding to remove him [#04-OA-17], and, following a trial permeated with flagrant violations of her rights, had received from him two sentences [A-1722, ln. 1 & A-1728, ln. 15], each dramatically deviating from the recommendations of the D.C. Court Services' presentence report [A-1618] and the prosecution's memorandum in aid of sentencing [A-1619] – with the superseding second sentence imposing the maximum six-month jail time

allowable under the "disruption of Congress" statute.

Judge Holeman gave no reason for departing from the sentencing recommendations in the record before him. Both the D.C. Court Services' presentence report [A-1617 "EVALUATIVE SUMMARY"] and the prosecution's memorandum in aid of sentencing [A-1620-1: "DEFENDANT HAS FAILED TO TAKE ANY RESPONSIBILITY FOR HER ACTIONS"] recognized that Sassower was not remorseful, contrite, and acknowledged no wrongdoing. Even still, the Court Services' "RECOMMENDATION" was not jail, but a "Fine" [A-1618]. The prosecution's recommendation was "five days of incarceration, all suspended, and six months of probation conditioned on completion of an anger-management course." [A-1619].

[p. 96] Judge Holeman's original 92-day jail sentence [A-1722, ln. 1] was 18 times the five days deemed appropriate by the prosecution. The superseding six-month jail sentence he imposed after Sassower declined probation [A-1728, ln. 15] was 36 times. As for the rejected probation, its two-year term [A-1722, ln. 4] was four times what the prosecution had recommended and attached a laundry list of conditions which, with the exception of the anger management course, were entirely Judge Holeman's own. These *sua sponte* conditions, as well as the anger management course, not only had no basis in the record, but were irrelevant to the "disruption of Congress" charge. Their inclusion was to degrade, impugn, and harass Sassower, including by intruding on her CJA employment to the point of surveillance and to prevent her from discharging her professional duties by appropriate First Amendment petitioning of the Senators in matters pertaining to the corruption of federal judicial selection and discipline[33].

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33 *See* Issue IV, *infra*.

Judge Holeman gave no reason for any of the probation terms – or for his original 92-day jail sentence. He also gave no reason for imposing his superseding six-month jail sentence, except what he termed Sassower's "pride" in withholding her consent to probation [A-1728, ln. 22]. Such conclusory assertion as to Sassower's "pride" was without any inquiry of Sassower as to why she was withholding consent and had no basis in the record.

Yet, Judge Holeman's sentences, both original and superseding, were not only without basis in the record, they were also without basis in precedent. There had never been a "disruption of Congress" case against a citizen for respectfully requesting to be permitted to testify at a public congressional hearing, let alone, as here, where the hearing was already adjourned. Sassower highlighted this at the June 28, 2004 sentencing, wherein she referred to **[p. 97]** what appeared to be a practice of not arresting citizens at committee hearings, even where their conduct was disruptive and provocative. Judge Holeman cut her off as she cited three incidents, two within the previous nine weeks [A-1721].

Judge Holeman's June 28, 2004 Denial of Sassower's Request for a Stay Pending Appeal

> "...when the trial court recognizes its right to exercise discretion but declines to do so, preferring instead to adhere to a uniform policy, it also errs. *Berryman v. United States*, D.C. App, 378 A2d 1317, 1320 (1977), *Springs v. United States*, D.C. App. 311 A.2d 499, 501 (1972)", *Johnson v. United States*, 398 A.2d 354 (1979).

The record showed no basis for Sassower's immediate incarceration such that the propriety of Judge Holeman's sentencing and the lawfulness of her

conviction could not first be tested by the appellate process. In denying Sassower's request for a stay pending appeal [A-1729-30], Judge Holeman made no claim that he believed that either Sassower's conviction or his sentence could stand on appeal. As he knew from his profound due process violations of her rights – such as reflected by Sassower's May 25, 2004 letter for inclusion in the presentence report [A-1685] and her June 28, 2004 affidavit commenting upon and correcting the presentence report and opposing the U.S. Attorney's memorandum in aid of sentencing [A-1641] – they could not.

As to Judge Holeman's asserted reason for denying Sassower a stay, *to wit*, that it would show her "favorable treatment" that he had "not in the past shown any other convicted criminal defendant" and he would not "start the practice now" [A-1730], such represented a prefixed position not to evaluate whether the facts and law in her case entitled her to a stay and release pending appeal, as was his duty to do. From the record before him, he knew she fully qualified for release pending appeal since – over and above the fact that her likelihood of **[p. 98]** success on appeal was 100% by reason of his pervasive actual bias, denying her due process -- she was not a flight risk and posed no threat to persons or property.

Judge Holeman's November 22, 2004 Order Denying Sassower's Motion to Correct an Illegal Sentence

Like his pretrial orders, Judge Holeman's November 22, 2004 order denying, as "devoid of merit", Sassower's October 26, 2004 motion pursuant to D.C. Criminal Procedure Rule 35(a) and D.C. Code §23-110(a) to correct an illegal sentence and denying a hearing was a "judicial lie", being factually and legally insupportable and fabricated.

The November 22, 2004 order [A-10] was fashioned on concealing the very basis upon which the

October 26, 2004 motion [A-1739] was made: that the six-month jail sentence was an illegal second sentence, superseding a legal first sentence of 92 days.

The order nowhere referred to this 92-day sentence. Even in acknowledging Sassower's contention that she was "sentenced twice" and that "the imposition of 6 months incarceration is a *second* sentence, and therefore illegal" [A-13, italics in order], the order purported Sassower "argues that the rejected proposal of probation is a *first* sentence" [A-13, italics in order]. This is untrue. The motion argued that the first sentence was the 92-day sentence, announced by Judge Holeman before setting forth any proposal of probation [A-1743, 1745-6, 1752-4].

As this first 92-day sentence was dispositive of Sassower's entitlement to relief under Rule 35(a) and 23-110(a), the November 22, 2004 order concocted a fiction that Judge Holeman had not imposed any sentence until after Sassower rejected probation:

> "On June 28, 2004 Defendant was offered probation, Defendant rejected probation, and only following Defendant's clear and unequivocal rejection of probation was sentence imposed." [A-13].

[p. 99] The flagrant untruth of this and similar statements in the November 22, 2004 order is established by the June 28, 2004 transcript [A-1707], which Sassower's motion not only quoted from, but annexed [A-1745]. It shows Judge Holeman's announcement, "I'm sentencing you to 92 days; I'm going to give you credit for any time served in this case. I'm going to suspend the execution as to all remaining time." [A-1722] This is then followed by his recitation of probation terms [A-1722-7], after which, upon Sassower's rejection of probation [A-1728], Judge Holeman scrapped the originally announced 92-day sentence with the words, "You are sentenced to six

months incarceration." [A-1728].

Yet, Judge Holeman's November 22, 2004 order was not only factually false in its claim that no sentence had been imposed upon Sassower until after she had rejected probation, it was also without the slightest legal support for such proposition. This would have been evident had the order cited the statutory provision governing the offering of probation to a defendant and his right of consent thereto. It is D.C. Code §16-760 and its pertinent language, quoted in Sassower's motion, states:

> "...the court may, upon conviction...impose sentence and suspend the execution thereof, or impose sentence and suspend the execution of a portion thereof, for such time and upon such terms as it deems best if it appears to the satisfaction of the court that the ends of justice and the best interest of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, or the imposition of sentence and the suspension of the execution of a portion thereof, the court may place the defendant on probation under the control and supervision of a probation officer....A person may not be put on probation without his consent.".

This Court in *Schwasta v. United States*, 392 A.2d 1071, 1073 (1978), has provided the obvious interpretation of this statutory language, *to wit*, that it "permits the trial court to grant probation only after it has imposed a sentence and suspended its execution." Consequently, had Judge Holeman done what his November 22, 2004 order claimed, namely, **[p. 100]** not imposed any sentence until after Sassower rejected probation, such would have violated D.C. §16-760 and its explicit interpretation in *Schwasta*.

A multitude of other deceits permeate the November 22, 2004 order – worthy of note only because they further demonstrate the unremitting pervasiveness of Judge Holeman's dishonesty, the consequence of which was to wrongfully incarcerate Sassower for the last remaining month of the six-month sentence – rather than release her in time for Thanksgiving. Among these deceits, (1) his repetition of the fact that the six-month sentence was within the maximum allowed by the "disruption of Congress" statute [A-10, 12, 13] – when that was completely irrelevant to the basis upon which Sassower's motion contended the sentence was illegal; (2) his repeated assertion that the motion was untimely for purposes of "correcting a sentence imposed in an illegal manner" and implication that the motion was brought on such ground [A-11, 12] – when it was not; (3) his pretense that Sassower's motion rested on "mere conclusory allegations, the authority cited inapposite and non-controlling, and the argument confusing" [A-11, 12] – for which he offered not a single example; (4) his pretense that Sassower's motion was "in substantial part, a critique of the *proposed conditions* of probation presented to Defendant prior to the imposition of sentence." [A-3, italics in his order) – when most of the motion was addressed to the legality of his superseding six-month sentence, not any of the probation conditions; (5) his pretense that Sassower's motion had contended that Judge Holeman's first sentence was "the rejected proposal of probation"[34] [A-13] – when her **[p. 101]** motion clearly stated that the first sentence was his announcement of 92 days; (6) his pretense that "Defendant's current argument that she was sentenced twice is inconsistent with the

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34 As to Judge Holeman's assertion that "a proposal of probation is not a sentence under any reading of authority" [A-13], the law review article cited by Sassower's motion, "*Coercion, Pop-Psychology, and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*", 57 Wash & Lee L. Rev 75, 93 (2000) [A-1750] reflects that that is not the case. "A small minority of states, as well as, notably, the federal legislature have explicitly declared probation to be a sentence...". *See*, 18 U.S.C. 3551(b) (1994) "identifying probation as sentence".

record" [A-13] – when the transcript irrefutably established that she had been "sentenced twice"; (7) his declaration that "The sentencing judge is empowered to offer a defendant sentencing alternatives from which the defendant may choose" [A-13-4] – falsely implying that he had offered Sassower the choice of probation or six months incarceration as "sentencing alternatives", when, in fact, he imposed the six-month jail sentence without the slightest prior notice to Sassower, who he had already sentenced to 92-days; (8) his pretense that there could be no challenge to his jurisdiction [A-10-11, 12], when, as he knew from Sassower's April 6, 2004 petition for a writ of mandamus/prohibition, he was without authority to proceed further by reason of her sufficient February 23 and March 22, 2004 motions for his disqualification [A-265, 375]; (9) his misrepresenting D.C. Code §23-110(e) as "expressly prohibit[ing] consideration of a second or successive motion for similar relief on behalf of the same prisoner." [A-12-3], when its plain language confers discretion on the judge to entertain further motions; (10) his misrepresentation of Sassower's motion as "nothing more than a reiteration of issues" presented by her September 23, 2004 motion for release to preclude mootness [A-1732] and her virtually identical prior motion to this Court [A-13] – when, in fact, both those motions were limited to precluding mootness on appeal of the issue of the legality of the six-month sentence; (11) his pretense that Sassower was not entitled to a hearing pursuant to D.C. Code §23-110 because her "constitutional claims are not only conclusory, they are palpably incredible" [A-13]; because her "claims do not merit a hearing" [A-14] and because "On its face the Motion fails" and "the existing record provides an adequate basis for denying the Motion" [A-14].

POINT II of petitioner's November 6, 2005 "Conforming Brief on the Merits" (pp. 36-37): the venue provision of the disruption of Congress statute and her entitlement to removal/transfer to federal court*

ISSUE II

D.C. CODE §10-503.18 ENTITLED SASSOWER TO REMOVAL/TRANSFER TO THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA – WHERE, ADDITIONALLY, THE RECORD ESTABLISHES A PERVASIVE PATTERN OF EGREGIOUS VIOLATIONS OF HER FUNDAMENTAL DUE PROCESS RIGHTS AND "PROTECTIONISM" OF THE GOVERNMENT

It does not appear that this Court – or any other -- has ever interpreted D.C. Code §10-503.18 – the section of the District of Columbia Code pertaining to prosecutions for offenses committed on "Capitol Grounds" under D.C. Code §10-503.16. In pertinent part, it states:

> "(c)...Prosecution for any violation of 10-503.16(a) or for conduct which constitutes a felony under the general laws of the United States or the laws of the District of Columbia shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of this part **may** be in the Superior Court of the District of Columbia.... (bold added for emphasis)

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* **This POINT II is identical to POINT II in petitioner's June 28, 2005 brief, except for an italicized addition to its footnote. The POINT replicates petitioner's argument in her April 6, 2004 petition in support of certiorari and/or certification of questions of law as to the interpretation of the venue provision of the disruption of Congress statute and her entitlement to removal/transfer to federal court.**

In other words, while a prosecution for "disruption of Congress" pursuant to D.C. Code §10.503.16(b)(4), "**may** be in the Superior Court for the District of Columbia", it is actually properly venued in the United States District Court for the District of Columbia.

Based on the language of D.C. Code §10.503.18, Sassower was legally entitled to have the U.S. Attorney prosecute the "disruption of Congress" charge against her in the U.S. District Court for the District of Columbia, with no special showing by her required for that venue. That being said, the record of this case establishes a pervasive pattern of judicial lawlessness and "protectionism" of the government[13], warranting removal to another venue.

[p. 37] Sassower's rights under D.C. Code §10-503.18 were presented for the first time by her March 22, 2004 motion [A-375]. Her interpretation of D.C. Code §10-503.18 was drawn from the plain meaning of its language [A-401-2] and not denied or disputed by the prosecution's March 23, 2004 opposition [A-464]. Judge Holeman's March 29, 2004 order [A-466] disposed of the issue by falsely purporting that Sassower had presented "no...change in substantive law, nor citation of any legal authority supportive of the requested relief" [A-466-7].

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13 This includes the wilful failure of supervisory authorities of the Superior Court to respond to Sassower's February 26, February 27, and March 17, 2004 memoranda for their supervisory oversight of Judge Holeman [A-426, 435, 454], as well as this Court's response to her April 6, 2004 mandamus/prohibition/certiorari petition and stay application – a prelude to what it did on her motions for release from incarceration pending appeal, on her perfected emergency appeal, *[and on the motions and en banc petition she filed in connection with her June 28, 2005 brief – all chronicled by her October 14, 2005 motion].*

POINT III of petitioner's November 6, 2005 "Conforming Brief on the Merits" (pp. 37-46): the unconstitutionality of the disruption of Congress statute, *as written and as applied*[*]

ISSUE III

D.C. CODE §10-503.16(B)(4) IS UNCONSTITUTIONAL, *AS WRITTEN & AS APPLIED*

The Statute is Unconstitutional as Written

In *Armfield v. United States*, this Court quoted the Supreme Court in *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972), as to the standard by which speech and expressive conduct in public places might be restricted, consistent with the First Amendment:

> "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time."

This "crucial question" – which Judge Holeman quoted in his "Elements of the Offense", citing *Armfield* [A-1403] -- makes obvious that a citizen's respectful request to testify at a public congressional hearing – as at bar -- cannot be prosecuted under D.C. Code §10-503.16(b)(4). Quite simply, such request is compatible with the "normal activity" of a public congressional hearing, *to wit*, the taking of testimony, including from members of the public.

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[*] **This POINT III is identical to the POINT III in petitioner's June 28, 2005 brief – and both are a largely identical to petitioner's draft memorandum of law, annexed as Exhibit D to her reargument/reconsideration motion for release from incarceration pending appeal [A-219].**

The essential and necessary role of citizen participation in this "normal activity" as relates to the Senate Judiciary Committee's public hearings to confirm federal judicial nominees **[p. 38]** – at issue herein – was reflected in the record before Judge Holeman, including . Sassower's 39-page May 21, 2003 fax to Detective Zimmerman [A-102]. That fax, the dispositive document in Sassower's October 30, 2003 discovery/disclosure/sanctions motion [A-39], referenced and quoted from a variety of sources with respect to citizen participation [A-122, 128 (fn. 6)]: the 1986 Common Cause report, Assembly-Line Approval [A-1587], the 1988 Twentieth Century Fund book, Judicial Roulette [A-1595], and the 1975 book by the Ralph Nader Congress Project, The Judiciary Committees [A-1579] whose chapter, "*Judicial Nominations: Whither 'Advice and Consent'?*", described a confirmation hearing at which the presiding chairman inquired "if anyone in the room wished to speak on behalf of or against the nominee" [A-1584, 128 (fn. 6)] – a hearing not represented to be atypical in that or any other respect.

From *Grayned*, it is clear that D.C. Code §10-503.16(b)(4), as written, is unconstitutional. Whereas the anti-noise statute upheld in *Grayned* involved noise "adjacent" to a school while in session – in other words, was explicitly restricted to a single "particular place at a particular time" -- D.C. Code §10-503.16(b)(4) is not narrowly-tailored to a public congressional hearing. Rather, it reads:

> "(b) It shall be unlawful for any person or group of persons willfully and knowingly:
>
> * * *
>
> (4) To utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings, with intent to impede, disrupt, or disturb the orderly

> conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any deliberations of, any committee or subcommittee of the Congress or either House thereof."

It thus combines more than a single "particular place at a particular time". More significantly, it combines places having divergent "normal activity". The "normal activity" of sessions of Congress and either House, as likewise of their committee/subcommittee **[p. 39]** deliberations, consists of communications between and among the members of those bodies – with the public having no role.[14] By contrast, the "normal activity" of public committee/subcommittee hearings is the taking of testimony from non-members of Congress – frequently members of the public.

Exacerbating this facial unconstitutionality of D.C. Code §10-503.16(b)(4) is the absence of any caselaw with respect to its combination of places with disparate "normal activity". Indeed, neither this Court's decision in *Smith–Caronia v. United States*, 714 A.2d 764 (1998), upholding the constitutionality of the language thereafter recodified as D.C. Code §10-503.16(b)(4), nor its decision in *Armfield* resting thereon, have anything to do with committee/subcommittee hearings – or any conduct which would be compatible with same. *Smith-Caronia* and *Armfield* involved conduct in the galleries of the Senate and House respectively, which had it been committed during a committee/subcommittee hearing, may also have been deemed disruptive. Those cases, because they arise from conduct in the galleries where citizens are invited only to observe, never participate, do not control and have little to do with the constitutional challenge to D.C. Code

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14 "The public is admitted to the gallery to observe, nothing more", *Smith-Caronia*, 714 A.2d 764, 765 (1998).

§10-503.16(b)(4) here presented arising from a public congressional hearing. Nor do they control for a further reason: in *Smith-Caronia* and *Armfield*, the respective "disruptions" occurred while the Senate and House were in session.

Obvious from *Smith-Caronia* and *Armfield* (at 798) is that there can be no "disruption of Congress" if the congressional body is adjourned because its "normal activity" has then ceased. *Smith-Caronia* explicitly rests on this Court's decision in *District of Columbia v. Gueory*, 376 A.2d 834 (1977). It describes that case as one in which the Court "sustained against First Amendment challenge an almost identically worded Commissioner's order", construing its **[p. 40]** language as "prohibiting only 'actual or imminent interference' with the peaceful conduct of governmental business." As evident from *Gueroy* (at 837), the standard of "actual or imminent interference' with the peaceful conduct of governmental business" is derived from *Grayned*, where the Supreme Court upheld a statute which unambiguously contained a time restriction for school while "in session".

To the extent there is ambiguity that the language "any session of the Congress or either House thereof" means "in session", with proceedings in progress and not adjourned – and that this applies, as well, to the language "any hearing before...any committee or subcommittee of the Congress or either House thereof", D.C. Code §10-503.16(b)(4) is facially deficient.

From the discussion in *Smith-Caronia* as to why the language that is now D.C. Code §10-503.16(b)(4) "comfortably meets" the standards of facial constitutionality (at 766) – a discussion largely resting on *Gueory* -- it is evident that D.C. Code §10-503.16(b)(4), is unconstitutional as applied to the facts of this case. Thus, although the statute is "viewpoint-neutral on its face", it can, as here, readily lend itself to being utilized for discriminatory, selective, and retaliatory purposes.

Although the statute also "leav[es] open ample means of communication not calculated to disrupt the orderly conduct of the legislature's business", no effective alternative means of communication is, in fact, available. Nor does this case support the proposition that the statute only prohibits "loud speech and other acts both of a nature to and specifically intended to disrupt the businesses of Congress". Moreover, as stated in *Gueory* (at 838), "It has long been recognized that a requirement of knowing conduct can serve to narrow a statute attacked on overbreadth and vagueness grounds" and "Intent requirements have also narrowed statutes attacked specifically under the First Amendment on overbreadth and vagueness grounds." That being the case, this Court's admission in *Armfield* (at 797-8) that it has "not squarely addressed the question of what kind of evidence is required to establish the specific intent necessary for **[p. 41]** conviction" under the "disruption of Congress" statute means that D.C. Code §10-503.16(b)(4) has been not been appropriately narrowed .

The Statute is Unconstitutional as Applied

The instant case is unprecedented. No decisions have been located with any facts remotely resembling those at bar: a citizen arrested and prosecuted under the statutory provision that is now D.C. Code §10-503.16(b)(4) for respectfully requesting to testify at a public congressional hearing, where, additionally, the request is made after the hearing has been "adjourned" and where the record shows that "alternative channels of communication" to the pertinent members of Congress and congressional offices were exhausted prior thereto.

Precisely because the facts of this case do not support a prosecution under D.C. Code §10-503.16(b)(4), they were concealed and falsified by Capitol Police in materially false and misleading prosecution documents in which the U.S. Attorney was complicitous. Such concealment and falsification is established by the

videotape of the Senate Judiciary Committee's May 22, 2003 hearing and further buttressed by Sassower's "paper trail" of correspondence [A-102-140, 1431-1539, 142-148], most specifically, by her 39-page May 21, 2003 fax to Detective Zimmerman [A-102] and her May 28, 2003 memorandum to Senate Judiciary Committee Chairman Hatch and Leahy [A-142] – each pivotal documents in her October 30, 2003 discovery/disclosure/sanctions motion [A-39].

The U.S. Attorney never came forward with any decisional law criminalizing what the videotape and substantiating "paper trail" evidentiarily establish -- a citizen's respectful request to testify at a public congressional hearing, made after the hearing was announced "adjourned" and against a record establishing that her repeated efforts to communicate with the Senators and/or supervisory staff by alternative means were all unavailing. Nor did the U.S. Attorney **[p. 42]** make any production with respect to the very first item in Sassower's August 12, 2003 first discovery demand [A-70] for:

> "(1) Any and all records of arrests by Capitol Police of members of the public for requesting to testify in opposition to confirmation of federal judicial nominees at Senate Judiciary Committee hearings -- particularly where the arrestee was charged with 'disruption of Congress' (10 D.C. Code Section 503.16(b)(4))".

Indeed, the precedent for Capitol Police's handling of a citizen's respectful request to testify at a Senate Judiciary Committee confirmation hearing was supplied by Sassower herself: the Committee's June 25, 1996 confirmation hearing at which, prior to adjournment, Sassower had risen to respectfully request to testify with "citizen opposition". She was neither arrested nor even removed from the hearing room.

In *Grayned*, the Supreme Court laid out three grounds for striking a law as unconstitutionally vague:

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.[fn. 3] Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.[fn. 4] A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.[fn. 5] Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,'[fn. 6] it 'operates to inhibit the exercise of those freedoms.'[fn. 7] Uncertain meanings inevitably lead citizens to "steer far wider of the lawful zone'...than if the boundaries of the forbidden areas were clearly marked.'[fn. 8]" (at 108).

The record of this case establishes each of these three grounds.

First, D.C. Code §10-503.16(b)(4) is plainly an impermissible "trap [for] the innocent". There is nothing in its generic language that would lead "a person of

ordinary intelligence" to believe that a respectful request to testify at a public congressional hearing – made at an **[p. 43]** appropriate point of the hearing -- is prohibited conduct. Reflecting Sassower's good-faith, reasonable belief as to what was permissible[15] is her 39-page May 21, 2003 fax to Detective Zimmerman [A-102] – also sent to Senate Judiciary Committee Chairman Hatch and Ranking Member Leahy, and New York Home-State-Senators Schumer and Clinton. Such fax presented her contention, based on prior Senate Judiciary Committee precedent cited in the 1975 book of The Ralph Nader Congress Project [A-1584], that the presiding chairman at the May 22, 2003 hearing could and should inquire whether anyone present wished to testify and that, if he did not, she had "a citizen's right in a democracy to peaceably and publicly request to testify in opposition". None of the recipients of the May 21, 2003 faxes denied or disputed this – let alone responded that she would be liable for arrest and prosecution if she made such respectful request – and that D.C. Code §10-503.16(b)(4) would furnish a legal basis therefore.

Certainly, if such respectful request warranted arrest under D.C. Code §10-503.16(b)(4), Sassower should have been arrested at the June 25, 1996 hearing for her respectful request to testify with "citizen opposition". That she was not arrested only reinforced her good-faith, reasonable belief as to the lawfulness of any similar request as she would make at the May 22, 2003 hearing -- and here too the recipients of the May 21, 2003 faxes did not respond to the contrary.

Second, D.C. Code §10-503.16(b)(4) lends itself to arbitrary and discriminatory enforcement by its failure to "provide explicit standards for those who apply [it]." This

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[15] A defendant's "bona fide belief" in the lawfulness of his actions "may negate criminal intent, and thereby exonerate behavior which otherwise contravenes the [criminal] statute", *Leiss v. United States*, 364 A2d 803, 809 (1976).

is evident from the incidents to which Sassower referred at the June 28, 2004 sentencing [A-1721], of **[p. 44]** protestors who, having disrupted hearings in-progress, had not been arrested[16]. Each of the cited incidents was disruptive – in contrast to what Sassower did in respectfully requesting to testify in opposition to Judge Richard Wesley's confirmation to the Second Circuit Court of Appeals – which she did not do until presiding chairman Chambliss had announced the Senate Judiciary Committee's May 22, 2003 hearing "adjourned" [A-1246-49, 1265-67, 1574]. Such palpably selective arrest and prosecution of Sassower is precisely the kind of arbitrary, discriminatory, disparate treatment that runs afoul of the equal protection guarantees of our Constitution.

Tellingly, the U.S. Attorney supplied NO documents in response to the second item in Sassower's August 12, 2003 first discovery demand for

> "(2) Any and all documents pertaining to the protocol and/or guidelines of Capitol Police for responding to 'disruptive' conduct by members of the public and for evaluating when arrest is appropriate",

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16 The particulars of these incidents were set forth in Sassower's draft memorandum of law on the unconstitutionality of the "disruption of Congress" statute, as written and as applied – which, as evident from the face of the document, she had intended to hand up to Judge Holeman in support of her request for a stay pending appeal. These incidents were (1) the eight or nine protestors at the May 7, 2004 Senate Armed Services Committee hearing, who unfurled a banner "FIRE RUMSFELD" and similarly shouted out; (2) the protestor at the April 27, 2004 Senate Foreign Relations Committee hearing to confirm John Negroponte as ambassador to Iraq, who objected to Mr. Negroponte's response to a question; and (3) this same protestor, in September 13, 2001, interrupting a Senate Foreign Relations Committee hearing to confirm Mr. Negroponte to be U.S. ambassador to the United Nations by holding a small sign and telling Mr. Negroponte that "the People of Honduras consider you to be a State terrorist".

except for a copy of D.C. Code §10-503.16 itself. This, notwithstanding it was clear from Detective Zimmerman's testimony upon Sassower's cross-examination that such protocol exists [A-857-8].

The "lack of explicit standards" in D.C. Code §10-503.16(b)(4) was evidenced at trial by the testimony of Officer Jennings, purported to be the "arresting officer" by the underlying prosecution documents [A-88, 89], and Sergeant Bignotti, the true arresting officer. On cross-**[p. 45]** examination, Officer Jennings not only conceded that it was Sergeant Bignotti who had arrested Sassower [A-954-5], but testified that his response to Sassower had not been – as Sergeant Bignotti's was – to order her from the hearing room, but, rather, to tell her to sit down [A-953]. Since their testimony as to Sassower's conduct did not materially diverge [A-888-960 / A-961-1023], their incompatible responses as to whether Sassower's arrest was warranted may reasonably be attributed to the "lack of explicit standards" of D.C. Code §10.503.16(b)(4). At bar, such permitted Sergeant Bignotti to give reign to her vindictive, personal *animus* against Sassower for filing a police misconduct complaint against her in 1996, based on her role in Sassower's arrest in the hallway outside the Senate Judiciary Committee on June 25, 1996 on a trumped-up "disorderly conduct" charge [A-59-60]. Such was over and beyond any directive Sergeant Bignotti may have received, as the senior officer assigned, from Capitol Police and/or the Senate Judiciary Committee to arrest Sassower – an arrest whose retaliatory purpose could easily be concealed within the vague, overbroad language of D.C. Code §10.503.16(b)(4).

Third, D.C. Code §10-503.16, as applied, unconstitutionally "abut[s] upon sensitive areas of basic First Amendment freedoms" because it has sustained an arrest, prosecution, and conviction of a person who not only did nothing more than respectfully request to testify with "citizen opposition" at the Senate Judiciary Committee's May 22, 2003 hearing – after the hearing

was already announced "adjourned" -- where the record shows that her opposition testimony would have exposed not only Judge Wesley's "documented corruption" as a New York Court of Appeals judge, but the official misconduct of Home-State Senators Schumer and Clinton and the Committee's leadership under Chairman Hatch and Ranking Member Leahy with respect thereto. As the "paper trail" of evidence establishes, these Senators were motivated to intimidate and arrest Sassower lest her appearance at the confirmation hearing and publicly-made request to testify pierce the Senators' "insulation" from culpability afforded by the staff **[p. 46]** underlings, whose misfeasance and nonfeasance she had so resoundingly documented. Indeed, it appears that such motive was actualized and that she was "set up" to be arrested. Sassower's analysis of the videotape describes the "tell-tale" signs [A-1576-7].

As applied, D.C. Code §10-503.16 is also unconstitutional for overbreadth. As the Supreme Court recognized in *Grayned*:

> "A clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct. [fn.27] ... overbroad laws, like vague ones, deter privileged activity... The crucial question, then, is whether the ordinance sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments." (at 114-115).

A respectful request to testify at a public congressional hearing – particularly, at a Senate Judiciary Committee hearing to confirm a "lifetime" federal judicial nominee – cannot be other than "constitutionally protected conduct", squarely within First Amendment free speech and petition rights. As this Court stated in *Matter of M.W.G.*, 427 A.2d 440 (1981)

"[T]he circumstances under which words are spoken are of critical importance in deciding whether the Constitution permits punishment to be imposed.", citing *Williams v. District of Columbia*, 419 F.2d 638, 645 (1979).

Finally, D.C. Code §10-503.16 is unconstitutional, as applied, because this Court, by its own admission, has "not squarely addressed the question of what kind of evidence is required to establish the specific intent necessary for conviction", *Armfield*, at 797-8. As a consequence, Judge Holeman was able to blithely ignore Sassower's 39-page May 21, 2003 fax to Detective Zimmerman [A-102] – whose two-fold significance in establishing that her intent was to respectfully request to be permitted to testify and that the prosecution had no case to prosecute by reason thereof – was focally presented by her October 30, 2003 discovery/disclosure/sanction motion [A-48-58].

POINT IV of petitioner's November 6, 2005 "Conforming Brief on the Merits" (pp. 47-50): the propriety, legality, and constitutionality of Judge Holeman's probation conditions and superseding six-month jail sentence

ISSUE IV

JUDGE HOLEMAN'S TERMS OF PROBATION FOR SUSPENDING EXECUTION OF THE ORIGINAL 92-DAY JAIL SENTENCE HE IMPOSED ON SASSOWER WERE IMPROPER AND UNCONSTITUTIONAL – AND THE SUPERSEDING SIX-MONTH JAIL SENTENCE HE SUBSTITUTED WHEN SHE EXERCISED HER RIGHT TO DECLINE THOSE TERMS PURSUANT TO D.C. CODE §16-760 WAS ILLEGAL AND UNCONSTITUTIONAL

This Court has recognized that:

> "'judicial discretion in formulating terms and conditions of probation is...limited by the requirement that the conditions be reasonably related to the rehabilitation of the convicted person and the protection of the public.'", *Gotay v. United States*, 805 A.2d 944, 946 (2002), quoting *Moore v. United States*, 387 A.2d 714, 715 (1978).

It has also held that:

> "A trial judge may not penalize a defendant for not admitting guilt and expressing remorse since the jury has found him guilty. Such an admission might jeopardize his right of appeal or a motion for a new trial..." *Miler v. United States*, 255 A.2d 497, 498 (1969).

As the "disruption of Congress" charge was not based on any harassing, stalking, violent, threatening or intimidating conduct – and the record was devoid of any such conduct on Sassower's part – there was no basis for Judge Holeman to require that she:

(a) have "no verbal, written, telephonic, electronic, physical or other contact" with the nine Senators and Senate staffers whose trial testimony she had sought by subpoena, as well as the four police officers who had testified against her – with some relaxation of the prohibition as to Home-State Senators Schumer and Clinton (but none as to the other senators who, as members of the Senate Judiciary Committee and its leadership she would have reason to contact in connection with her work as CJA coordinator) [A-1726-27];

(b) stay away not only from the Senate Judiciary Committee and the three-block radius that was the prescribed condition for her release on her own recognizance at the May 23, 2003 arraignment, but from the entire Capitol complex of all Capitol buildings and grounds indicated on "maps provided herewith" and encompassing the Library of Congress, Supreme Court, Capitol Power Plant, etc. [A-1724-26];

(c) stay away from Judge Wesley [A-1726];

[p. 48]

(d) pay $250 to the Victims of Violent Crimes Compensation Fund [A-1722] – the statutory maximum.

As the record showed that Sassower had a secure job as CJA coordinator – which she had co-founded – and had answered Judge Holeman's inquiry at sentencing as to how many hours she worked by stating "24/7", citing the prodigious, quality workproduct that was before him [A-1718] – there was no basis for him to order her to work

40 hours a week minimum, that she get other work if she did not keep that job, and submit to him "daily time records containing a description of the task performed and the time expended", with each entry recorded "to the nearest tenth of an hour", with a warning that "block entries are not acceptable" [A-1723].

As the record showed that Sassower's "24/7" work as CJA's coordinator constituted full-time "community service" – and she so-stated in her June 28, 2004 affidavit [A-1662] and at sentencing [A-1717] – there was no basis for Judge Holeman to order that she perform a substantial 300 hours of community service – 200 in New York and 100 in Washington, D.C., with an express exclusion of Sassower's work at CJA beyond the 40 hour minimum as satisfying the "community service" requirement [A-1723-24]. That Judge Holeman identified no provision to cover her traveling, food, and lodging expenses for the 100 hours of community service in D.C. – and required that only 25 of the 100 hours could be discharged during each six-month period -- made this condition all the more onerous.

Although there was nothing in the record that would constitute a basis for requiring Sassower to submit to medical, mental health, and drug screening and comply with testing and screening, this was ordered by Judge Holeman [A-1722-23, 1724], as likewise that she notify the probation officer if she left the jurisdiction for more than two weeks [A-1724].

As for Judge Holeman's final *sua sponte* condition of probation – that Sassower write letters of apology to the Senators and Judge Wesley [A-1727] – the Senators had never requested **[p. 49]** an apology, let alone attested to any injury for which an apology was warranted, and the record furnished no basis for an apology. Indeed, excepting for Senator Chambliss' name appearing on the underlying prosecution documents [A-88, 89], the Senators had absented themselves from the criminal

case. They had not testified on behalf of the prosecution, they had quashed Sassower's subpoenas for their testimony, they had ignored Sassower's memoranda calling upon them to deny or dispute the facts corroborative of her innocence from her "paper trail" of correspondence with them, and they had failed to even respond to her invitation as to what jail sentence they deemed appropriate [A-1696, 1703].

Point I of Sassower's October 26, 2004 motion [A-1748-52] challenged the constitutionality of the apology letters on First and Fifth Amendment grounds. It argued that the requirement that Sassower express remorse would require her to espouse political and ideological beliefs with which she did not agree, *to wit*, "that Judge Wesley was appropriately qualified to be appointed to the federal bench and that citizens should not be permitted to contribute to discourse regarding the confirmation process." [A-1749]. Indeed, reinforcing this was the condition barring Sassower from all contact with the Senate Judiciary Committee – thereby precluding her from contributing information with respect to other federal judicial nominees – as well as the condition that she record, to 1/10 hour increments, her work as CJA coordinator, thereby inferring that its content was somehow illegitimate and required surveillance.

These three conditions – the apology, the stay-away order, and the intrusion into the content of appellant's work as CJA's coordinator – infringe on Sassower's First and Fifth Amendment rights.

The statutory provision governing suspension of execution of sentence is D.C. Code §16-760. This Court's decision in *Schwasta v. United States*, 392 A.2d 1071, 1073 (1978), provides **[p. 50]** its obvious interpretation, *to wit*, that it "permits the trial court to grant probation only after it has imposed a sentence and suspended its execution." Plainly implicit in the announcement of sentence is the recognition that a defendant cannot give

informed consent to probation unless he is advised of the consequence in withholding it. Nor would the right to withhold consent be meaningful if a judge could punish such exercise by thereafter scrapping the announced sentence and imposing a maximum in its stead. Such would constitute an "unfree choice", *North Carolina v. Pearce*, 395 U.S. 711, 724, 89 S.Ct. 2072, 2080 (1969), and "coercion as a matter of law", *Byrd v. United States*, 377 A.2d 400, 405 (1977).

The terms of probation are the conditions for suspending execution of the announced sentence. Thus, when Sassower exercised her right under D.C. Code §16-760 to decline to consent to the probation terms, she forfeited the suspension of execution of sentence, not the sentence. By doubling to the six month maximum his already-announced 92-day jail sentence, Judge Holeman punished Sassower for exercising her lawful right to withhold consent to probation terms. That he did so without affording her notice or opportunity to be heard – where the rejected terms were palpably abusive and unconstitutional and where, additionally, he denied her request for a stay pending appeal -- made his actions all the more unlawful[17], constitutionally violative, and, vindictive.

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[17] Sassower incorporates by reference the further good and sufficient arguments as to illegality of Judge Holeman's superseding six-month sentence made at Points II-V of her October 26, 2004 motion [A-1752-55].

Petitioner's January 10, 2006 letter to D.C. Court of Appeals Chief Judge Eric Washington – thereafter annexed as Exhibit E to petitioner's October 16, 2006 letter-application for disqualification, disclosure & transfer (A-282) *

BY CERTIFIED MAIL/RRR: 7005-0390-0001-9888-4233

January 10, 2006

Chief Judge Eric Washington
D.C. Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

RE: Supervisory Oversight Pursuant to Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts:

Elena Ruth Sassower v. United States of America #04-CM-760 & #04-CO-1600
("Disruption of Congress" case)

Dear Chief Judge Washington:

This letter is written pursuant to Canons 3C and D of the Code of Judicial Conduct of the District of Columbia Courts, which impose upon you mandatory administrative and disciplinary responsibilities. By this letter, I herein memorialize, follow-up, and supplement my telephone requests for your supervisory oversight, which I communicated to your law clerk, Paul Rao, and to your administrative assistant, Sandra Strawder, on

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* **Thereafter also annexed to petitioner's January 2, 2007 petition for rehearing, rehearing *en banc*, motion to vacate for fraud, lack of jurisdiction, disqualification, disclosure, & transfer (A- 297).**

Friday, November 4, 2005 – to which I have received no response.

Such telephone requests, which were imploring and urgent, were impelled by the extraordinary misconduct of Judges Reid, Glickman, and Nebeker in hijacking my unopposed October 14, 2005 motion, whose nine filed copies and one original were intended for distribution to, and adjudication by, this Court *en banc*. These three judges, constituting a panel, then issued an *unsigned* five-sentence October 27, 2005 order which -- *without* denying or disputing the accuracy of my uncontested 29-page showing that their prior *unsigned* orders were "readily-verifiable as judicial frauds" (¶32) – denied the motion, *without* reasons and *without* identifying *any* of the facts, law, and legal argument it had presented. Totally concealed by their October 27, 2005 order – *as likewise by their past orders under these docket numbers* – was my requested relief for their disqualification and for the disqualification of the Court's other judges for pervasive actual bias and interest and, if denied, for disclosure by them, including of specified extrajudicial facts.

This October 27, 2005 order further directed the Court's Clerk to accept "no further filings" from me except for my "conforming brief on the merits, due on November 7, 2005", and my "conforming reply brief, if any, due within 21 days after the filing of appellee's brief on the merits" – a direction made *sua sponte* and *without* affording me *any* notice or opportunity to be heard, in stark contrast to *Corley v. United States*, 741 A.2d 1029 (1999) -- the sole case cited by the order, prefaced by an inferential **[p.2]** "*See*"[1].

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[1] As set forth by my October 14, 2005 motion (fn. 3),

> "According to The Blue Book: A Uniform System of Citation (Harvard Law Review Association, 18th ed., 2005), '*see*' before a legal citation means 'the proposition is not directly stated by the cited authority but obviously flows from it;

The pretext for such draconian *due process-less* direction – seemingly a first for this Court[2] -- was the bald claim that I had "presented numerous times and without success" the "requests made" in what the order characterized as my "renewed motion to vacate and for other relief" and that my "insistence on raising them yet again constitutes an abuse of this court's processes." Tellingly, the order provided no details as to my repetitive requests, did not purport that their previous presentation had been frivolous, did not purport that their presentation by my October 14, 2005 motion was frivolous, and did not identify a single reasoned adjudication with respect thereto or make findings of fact as to any response from me.

As I explained to your staff, the consequence of this latest completely fraudulent order by Judges Reid, Glickman, and Nebeker was to block me from challenging it judicially[3] and to railroad my consolidated appeals before a Court demonstrated to be disqualified for pervasive

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there is an inferential step between the authority cited and the proposition it supports.' (at p. 46)."

Here, the meaning of "*see*" is that *Corley* inferentially supports the panel's barring order. It does not.

[2] **For purposes of confirming the unprecedented, first-ever nature of this Court's October 27, 2005 order, I hereby request the names of other litigants who this Court has barred from filing – if not a copy of the barring orders themselves. According to this Court's supervisory case manager Thomas Abraham, their names appear on a list in the Clerk's office.**

[3] This would additionally explain why the Court discarded all nine copies of my October 14, 2005 motion before expiration of my time to move for reconsideration. Indeed, promptly upon my receipt of the October 27, 2005 order, I telephoned Mr. Abraham and inquired about the copies, which I wanted back for purposes of filing disciplinary and criminal complaints against the judges. After checking, Mr. Abraham informed me the copies – each consisting of nearly 180 pages of substantiating exhibits, in addition to the 29-page motion -- had already been destroyed.

actual bias and interest. This, in addition to preventing the Court's other judges from taking appropriate responsive steps with respect to the express notice which my October 14, 2005 motion gave them (at ¶3) that unless they confronted the flagrant corruption of the judicial process in this case by Judges Reid, Glickman, and Nebeker, as well as their own flagrant corruption of the judicial process in this case – beginning with their wilful disregard of mandatory rules of judicial disqualification and disclosure under Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts and the proper interpretation of *Liteky v. United States*, 510 U.S. 540 (1994) -- I would be filing disciplinary and criminal complaints against them all. I, therefore, requested that you personally examine the casefile and, specifically, my October 14, 2005 motion and the panel's October 27, 2005 order, and **[p. 3]** that you bring them to the attention of the Court's other judges so that they could make their own determinations as to their disciplinary and criminal liability.

Ms. Strawder told me that you were out of the office on Friday, November 4, 2005, but that she was taking notes of our phone conversation, spanning at least half an hour, which she would present to you the following week upon your return. **Please confirm that, as requested, (1) you personally examined my October 14, 2005 motion and the panel's October 27, 2005 order; (2) that you brought both to the attention of the Court's other judges for their personal review; and (3) that neither you nor they deemed it appropriate to recall the October 27, 2005 order and responsively adjudicate the October 14, 2005 motion.**

By way of supplement, I take this opportunity to bring to your attention that notwithstanding Rule 27(b)(1)(B) expressly contemplates appellate briefs exceeding the 50-page limit of Rule 32(a)(6) – and, upon information and belief, this Court routinely grants procedural motions

requesting such relief, particularly where consented-to -- Judges Reid, Glickman, and Nebeker were so malicious as to use their baseless October 27, 2005 order to reject my November 6, 2005 procedural motion for permission to add 20 pages to my "conforming brief on the merits" – to which the U.S. Attorney had consented.

Thus, under a November 14, 2005 "RETURN NOTICE" (Attachment #1), the Clerk's office returned to me, without filing, my consented-to November 6, 2005 procedural motion, with its accompanying pages for insertion into my "conforming brief on the merits". The stated reason was that I was to "See 10/27/2005 barring order". According to supervisory case manager Thomas Abraham, who signed the "RETURN NOTICE" and to whom I thereafter spoke, the determination to reject the motion, without filing, was made by Judges Reid, Glickman, and Nebeker.

With respect to the filing of my upcoming reply brief, it is obvious that I will be similarly prejudiced and precluded from securing such routinely granted procedural relief as an extension of page limits or time, as well as such substantive relief as sanctions against the U.S. Attorney's office and its disqualification for interest, should its "appellee's brief on the merits" violate its obligations under ethical rules of professional responsibility.

It must be noted that the 20 pages I sought to add to my "conforming brief on the merits" were specifically identified by my November 6, 2005 procedural motion as

> "reinforc[ing] the travesty of a trial to which I was subjected before the pervasively-biased Judge Holeman, entitling me to reversal, if not vacatur, *as a matter of law*, as well as disciplinary and criminal referrals against him and culpable members of the U.S. Attorney's office." (underlining and italics in the original).

Their rejection by Judges Reid, Glickman, and Nebeker represents a continued demonstration of how unabashedly these judges have departed from their critical appellate function and mandatory [p. 4] disciplinary responsibilities under Canon 3D of the Code of Judicial Conduct of the District of Columbia Courts to ensure the integrity of the judicial process.[4] Indeed, clear

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[4] Because the Clerk's office returned to me not only the three copies of my November 6, 2005 procedural motion, but the original, the Court's only record of it is its docket entry:

> "11/07/2005 APLT MO FOR LEAVE TO FILE BRIEF IN EXCESS OF PAGES (Titled: Motion for a procedural order pursuant to rule 27) (no oppo)
> (Returned, see 10/27/05 barring order)
> PMCMILLAN"

As such does not suffice for your supervisory evaluation of the actions of Judges Reid, Glickman, and Nebeker with respect thereto, the rejected original, with its accompanying original pages for insertion into the original of my "conforming brief on the merits", is herewith enclosed (Attachment #1). Also enclosed (Attachment #2) is the original letter referred to by the immediate preceding docket entry:

> "11/02/2005 RECEIVED – ltr from aplt regarding missing exhibits B and C from reconsideration filed 10/25/05 (sent back to aplt see order of 10/27/05)
> PMCMILLAN".

since it is otherwise impossible to conceive that anyone could apply the October 27, 2005 preclusion order to return to me my October 28, 2005 letter with its enclosures correcting omissions and errors in my October 14, 2005 motion.

Needless to say, the Clerk's office's notation of docket entries for the aforesaid documents, albeit rejected for filing, and its notation of a docket entry for my unexpurgated June 28, 2005 appellant's brief and supplemental fact statement, also rejected for filing, stand in marked contrast to the situation that prevailed during my incarceration – when the Clerk's office's rejection of my July 16, 2004 reconsideration motion, which it rejected again after the motion was resubmitted on August 12, 2004, without any docket entry either time, was the subject of my formal request by my August 24, 2004 motion that the Court clarify whether the Clerk's office docket of this case was proper and in conformity with its Rule 45(b)(1) – (*See* ¶¶3(c), 32-34 of my typewritten August 24, 2004 motion, annexed to my October 14, 2005 motion as Exhibit H) – denied, *without reasons*, by the Court's

from their *without*-reasons denial of my June 28, 2005 procedural motion and their *without*-reasons and *false*-reasons denial of my subsequent and unopposed July 28, 2005 reconsideration/vacatur motion with respect thereto – the direct antecedents to my October 14, 2005 motion[5], culminating in their *without* reasons and *false* reasons October 27, 2005 order -- is that rather than welcoming my elucidation of the facts and law pertaining to the judicial misconduct of Judge Holeman, the prosecutorial misconduct of the U.S. Attorney's office, and the disqualification of each, they want only to curtail it so as to skew, if not altogether avoid, determination of these issues.

[p. 5] In that connection, it appears that Judges Reid, Glickman, and Nebeker – or Court personnel – have destroyed or secreted the most incriminating evidence of their cover-up of the judicial and prosecutorial misconduct below, *to wit*, my 119-page appellant's brief and 161-page supplemental fact statement -- the subject of the first branch of my June 28, 2005 procedural motion. According to Mr. Abraham, the originals, which should have been retained by the Court, are mysteriously missing and the three copies, which I had filed with the originals, were destroyed. In other words, my unexpurgated "chapter and verse" chronicling of the abomination to which I was subjected by Judge Holeman and by the U.S. Attorney's office in the proceedings before him no longer exists in the Court's files. Therefore, **I request that you direct an inquiry into the whereabouts of the missing originals of my June 28, 2005 appellant's brief and supplemental fact**

September 16, 2004 order (per Terry, Reid, Newman) (annexed as Exhibit C-4 to my October 14, 2005 motion).

[5] This Court's *unsigned* October 5, 2005 order denying my unopposed August 4, 2005 petition for *en banc* initial hearing of my appeals – *without* identifying my requests for disqualification of, and disclosure by, this Court's judges pursuant to Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts is, additionally, a direct antecedent.

statement and apprise me of the results so that, if necessary, I can furnish the Court with a replacement set of these dispositive documents.

I await your response, which I request no later than January 27, 2006.

Thank you.

Yours for a quality judiciary,

s/

ELENA RUTH SASSOWER
Appellant *Pro Se*

Enclosures

cc: Supervisory Case Manager Thomas Abraham
U.S. Attorney for the District of Columbia
ATT: Assistant U.S. Attorney Roy W.
McLeese, III, Appellate Division Chief
Assistant U.S. Attorney Florence Pan

Petitioner's February 22, 2006 judicial misconduct complaint against D.C. Court of Appeals judges, etc. – thereafter annexed as Exhibit F to petitioner's October 16, 2006 letter-application for disqualification, disclosure & transfer (A-282 herein) *

BY CERTIFIED MAIL/RRR: 7002-2030-0007-8572-9068

February 22, 2006

D.C. Commission on Judicial Disabilities and Tenure
Building A, Room 312
515 Fifth Street, N.W.
Washington, D.C. 20001

ATT: Cathaee J. Hudgins, Executive Director

RE: Judicial misconduct complaint against (1) D.C. Court of Appeals Chief Judge Eric T. Washington; (2) The Associate and Senior Judges of the D.C. Court of Appeals and, in particular, Judges Inez Smith Reid, Stephen H. Glickman, Frank Q. Nebeker, John A. Terry, Noel Anketell Kramer, Michael W. Farrell, John M. Steadman, Warren R. King, Theodore R. Newman, William C. Pryor, Annice M. Wagner, Vanessa Ruiz, Frank E. Schwelb, and John R. Fisher; (3) D.C. Superior Court Judge Brian F. Holeman; and (4) D.C. Superior Court Chief Judge Rufus G. King, III and D.C. Superior Court Criminal Division Presiding Judge Harold L. Cushenberry, Jr.

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* **Thereafter also annexed to petitioner's January 2, 2007 petition for rehearing, rehearing *en banc*, motion to vacate for fraud, lack of jurisdiction, disqualification, disclosure, & transfer (A-297 herein)**

Dear Ms. Hudgins,

I hereby file a judicial misconduct complaint against D.C. Court of Appeals Chief Judge Eric T. Washington for wilful violation of his mandatory duty to discharge his administrative and disciplinary responsibilities under Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts. Such misfeasance has been with knowledge that he is thereby covering up the corruption of the judicial process by his fellow judges of the D.C. Court of Appeals, itself covering up the corruption of the judicial process by D.C. Superior Court Judge Brian F. Holeman, aided and abetted by other D.C. Superior Court judges, most importantly, Chief Judge Rufus G. King, III – as *readily verifiable* from the record before those judges in the "disruption of Congress" case against me[1]. As to all these judges, I hereby also file a judicial misconduct complaint against them.

[p. 2] Most of the relevant facts are outlined by my enclosed January 10, 2006 letter to Chief Judge Washington, requesting his supervisory oversight over his fellow D.C. Court of Appeals judges, pursuant to Canons 3C and D – to which there has been no response. As therein particularized, I made a 29-page motion, dated October 14, 2005, for determination by the Court's judges *en banc*. The motion sought removal/transfer of my consolidated "disruption of Congress" appeals to the U.S. Court of Appeals for the District of Columbia, based on

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[1] The record in the D.C. Court of Appeals is docketed as follows: #04-CM-760 and #04-CO-1600 are my pending consolidated appeals and such prior proceedings as my legal advisor's June 28, 2004 motion for my release from incarceration and my own July 16/August 12, 2004 motion for reconsideration and other relief; #04-OA-17 is my April 6, 2004 petition for a writ of mandamus and prohibition against Judge Holeman and for certiorari and/or certified questions of law as to my entitlement to removal/transfer to federal court; and #04-CO-1239 is my *pro bono* counsel's October 6, 2004 expedited appeal and application for my release from incarceration. The record in D.C. Superior Court is docketed as #03-M-04113.

the judges' disqualification for pervasive actual bias and interest, and gave them notice that unless they addressed the record evidence of their corruption of the judicial process in the case, beginning with their wilful disregard of mandatory rules of judicial disqualification and disclosure under Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts, and the controlling decisional law of the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540 (1994), as to disqualification for "pervasive bias" meeting an "impossibility of fair judgment" standard, I would be filing disciplinary and criminal complaints against them all.

This October 14, 2005 disqualification/transfer motion, nine full copies of which I had filed with the original[2], was not distributed to the Court's judges, but was hijacked by a three-judge panel consisting of Judges Reid, Glickman, and Nebeker, whose knowing disregard of mandatory disqualification/disclosure rules and falsification of *Liteky* was focally detailed by the motion. Without denying or disputing the accuracy of the motion's *uncontested* showing that their prior *unsigned* orders were all "readily-verifiable as judicial frauds" (¶32), the panel rendered an *unsigned* five-sentence October 27, 2005 order denying the motion *without* reasons and *without* identifying *any* of the facts, law, and legal argument it had presented, all dispositive of my rights. Totally concealed by this October 27, 2005 order – as likewise by their prior *unsigned* orders under the docket numbers of my consolidated appeals – was my requested relief for their disqualification and for the disqualification of the Court's other judges for pervasive actual bias and interest and, if denied, for disclosure by them, including as to specified extrajudicial facts.

Judges Reid, Glickman, and Nebeker then blocked me

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[2] Annexed to the motion were nearly 180 pages of substantiating exhibits.

from judicially challenging this fraudulent October 27, 2005 order by directing the Court's Clerk to accept "no further filings" from me, except for my "conforming brief on the merits, due on November 7, 2005", and my "conforming reply brief, if any, due within 21 days after the filing of appellee's brief on the merits". This direction, having *no* basis in fact or law, was entirely *sua sponte* – and afforded me *no* notice or opportunity to be heard, in stark contrast to *Corley v. United States*, 741 A.2d 1029 (1999) – the sole case the order cited, prefaced by "*See*", connoting an inferential leap between my case and *Corley*.

I believe this due process-less barring order against me to be unprecedented in the history of the Court – and my January 10, 2005 letter sought confirmation of this by requesting (at p. 2), in bold-faced type, **"the names of other litigants who this Court has barred from filing – if not a copy of the barring orders themselves"**. Such informational request, critical to establishing the Court's invidiousness in denying me both due process and equal protection, is plainly germane to the Commission's **[p. 3]** investigation of this complaint. Likewise the other informational requests of my January 10, 2006 letter, all highlighted in bold-faced type. These further requests were that Chief Judge Washington confirm:

> **"(1) [that he] personally examined my October 14, 2005 motion and the panel's October 27, 2005 order; (2) that [he] brought both to the attention of the Court's other judges for their personal review; and (3) that neither [he] nor they deemed it appropriate to recall the October 27, 2005 order and responsively adjudicate the October 14, 2005 motion."** (at p. 3, underlining and bold in the original letter).

My January 10, 2006 letter recounted the prejudice already caused me by the October 27, 2005 order. Judges Reid, Glickman, and Nebeker had used it to reject, without filing, my consented-to November 6, 2005 procedural motion to add 20 pages to my "conforming brief on the merits" – relief otherwise routinely granted. And the letter foresaw comparable prejudice on my upcoming reply brief by a similar rejection, without filing, of routinely-granted procedural relief for an extension of page limits or time and, beyond that, for "such substantive relief as the U.S. Attorney's disqualification and sanctions, should its appellee's brief violate its obligations under ethical rules of professional responsibility".

Noting that my November 6, 2005 procedural motion had described the 20 pages as

> "reinforc[ing] the travesty of a trial to which I was subjected before the pervasively-biased Judge Holeman, entitling me to reversal, if not vacatur, *as a matter of law*, as well as disciplinary and criminal referrals against him and culpable members of the U.S. Attorney's office" (at p.3, underlining and italics in the motion and letter),

my letter – which attached the original of the rejected motion, including those pages -- stated that thereby demonstrated was

> "how unabashedly these judges have departed from their critical appellate function and mandatory disciplinary responsibilities under Canon 3D of the Code of Judicial Conduct of the District of Columbia Courts to ensure the integrity of the judicial process." (at pp. 3-4, underlining in the letter).

This was the latest in a pattern of such conduct. As stated,

> "clear from their *without-reasons* denial of my June 28, 2005 procedural motion and their *without-reasons and false-reasons* denial of my subsequent July 28, 2005 reconsideration/vacatur motion with respect thereto – the direct antecedents to my October 14, 2005 motion [fn], culminating in their *without reasons* October 27, 2005 order -- is that rather than embracing my elucidation of the facts and law pertaining to the judicial misconduct of Judge Holeman, the prosecutorial misconduct of the U.S. **[p. 4]** Attorney's office, and the disqualification of each, they want only to curtail it so as to skew, if not avoid, its determination." (p. 4, italics in the letter).

In that connection, my letter observed that "it appear[ed] that Judges Reid, Glickman, and Nebeker – or Court personnel – ha[d] destroyed or secreted the most incriminating evidence of their cover-up of the judicial misconduct below, *to wit*, my 119-page appellant's brief and 161-page supplemental fact statement – the subject of the first branch of my June 28, 2005 procedural motion." I reported that the originals of these documents were mysteriously missing from the Court files – with the result that the files no longer contained my "unexpurgated 'chapter and verse' chronicling of the abomination to which I was subjected by Judge Holeman and by the U.S. Attorney's office in the proceedings before him". My January 10, 2006 letter therefore requested, also in bold-faced type, that Chief Judge Washington:

> **"direct an inquiry into the whereabouts of the missing originals of my June 28, 2005 appellant's brief and supplemental fact statement and apprise me of the results so that, if necessary, I can furnish the Court**

> **with a replacement set of these dispositive documents."** (at p. 5, bold in the letter).

Chief Judge Washington's wilful failure to respond to these bold-faced requests or to otherwise demonstrate discharge of his administrative and disciplinary responsibilities, mandated by the most cursory comparison of the *unsigned* October 27, 2005 order with my *sworn* October 14, 2005 motion, constitutes judicial misconduct *per se* -- unless Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts are to be stripped of their mandatory and hortatory meaning.

No fair and impartial Chief Judge could tolerate the state of affairs described by my January 10, 2006 letter, thereby permitting my consolidated appeals to be railroaded "before a Court demonstrated to be disqualified for pervasive actual bias and interest" (at p. 2). Chief Judge Washington's wilful failure to respond creates the inference that he could not do so without exposing the *readily-verifiable* corruption and cover-up about which my letter complained.

Upon information and belief, Chief Judge Washington is himself an actor in this corruption and cover-up. As reflected by ¶¶31(f) and 29 of my October 14, 2005 motion, he participated with Judges Glickman and Nebeker in the *unsigned* October 14, 2004 order which, during my incarceration, denied my *pro bono* counsel's *unopposed* application for my release to prevent mootness and *sua sponte* dismissed said counsel's October 6, 2004 emergency appeal as to its only issue: mootness. A year later, he participated (with Judges Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman, and Kramer) in the *unsigned* October 5, 2005 order which, without addressing the disqualification/disclosure expressly sought by my August 4, 2005 petition for the Court's *en banc* initial review of my consolidated appeals, denied the petition by inaction.

Consequently, when I turned to Chief Judge Washington for his supervisory oversight of the *unsigned* October 27, 2005 order of Judges Reid, Glickman, and Nebeker with respect to my October 14, 2005 **[p. 5]** disqualification/transfer motion – which I initially did by lengthy telephone communications with his staff on November 4, 2005 -- he was not just receiving from me "information indicating that another judge ha[d] committed a violation" of the Code of Judicial Conduct for the District of Columbia Courts, as to which Canon 3D(1) imposes a hortatory obligation to "take appropriate action". Rather, he already had "knowledge", born of his own past and recent participation, that "judge[s] [had] committed...violation[s] of this Code that raise[] a substantial question as to....[their] fitness for office", as to which he was mandatorily obligated by Canon 3D(1) to "inform the appropriate authority". Of course, informing such "appropriate authority", as this Commission is, would have required him to disclose his own facilitating role in the criminality of his judicial brethren.

Further reinforcing the egregiousness of Chief Judge Washington's violations of his hortatory and mandatory obligations under Canon 3D(1) of the Code is his knowledge that he has thereby aided and abetted in the reappointment of D.C. Court of Appeals judges whose corruption in office required their removal – Judge Terry being the prime example.

As highlighted by ¶¶31(c), (d), (e), and ¶29 of my October 14, 2005 motion, Judge Terry participated in three fraudulent orders during the period of my incarceration: the *unsigned* July 29, 2004 order (with Judges Steadman and King), the *unsigned* September 16, 2004 order (with Judges Reid and Newman), and the *unsigned* September 23, 2004 (with Judges Reid and Farrell) – each without disqualifying himself for bias or making requisite disclosure. Similarly, he participated, by inaction, in the *unsigned* October 5, 2004 order denying my August 4,

2005 petition for *en banc* initial hearing of my appeals.

The disclosure Judge Terry was duty-bound to have made, but did not, includes the extrajudicial facts identified by ¶42 of my October 14, 2005 motion as to his close professional and personal ties to the U.S. Attorney's Office of the District of Columbia – and especially with Assistant U.S. Attorney John Fisher, who had risen to be his deputy chief when he was chief of the U.S. Attorney's appellate division, and whose two sets of submissions opposing my release from incarceration were demonstrated to be blatant frauds by my comprehensive July 16/August 12, 2004 motion for reconsideration and other relief[3] and September 13, 2004 reply affidavit[4]. Indeed, my requests therein for sanctions against the U.S. Attorney's Office, including disciplinary and criminal referrals pursuant to Canon 3D, were as to Mr. Fisher in particular.

As a direct consequence of Judge Terry's misconduct -- especially by his September 16, 2004 order which denied my dispositive July 16/August 12, 2004 motion by concealing that it sought my release from incarceration, sanctions against the U.S. Attorney, and disclosure by the Court's judges if they did not disqualify themselves for bias, as well as by concealing *all* the facts, law, and legal argument **[p. 6]** the motion presented -- I was not only maliciously kept incarcerated when my right to release was absolute, but Mr. Fisher was enabled to secure a September 30, 2004 recommendation from the D.C. Judicial Nomination Commission for appointment as associate judge on the D.C. Court of Appeals – to which President Bush nominated him on June 6, 2005[5].

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3 Annexed to my October 14, 2005 motion as Exhibit F, *see* ¶¶2(b), 9-10, 19-40.

4 Annexed to my October 14, 2005 motion as Exhibit I-2, *see* the ENTIRETY of my reply affidavit, ¶¶2-55.

5 My complaint herein against Judge Fisher arises from his

That Judge Terry has been able to become a senior judge is directly attributable to Chief Judge Washington's failure to discharge his mandatory disciplinary responsibilities in response to my oral communications with his staff on November 4, 2005, thereafter memorialized by my January 10, 2006 letter. Such required him to inform this Commission of Judge Terry's role in the judicial corruption chronicled by the record of the "disruption of Congress" case so that the Commission could disapprove his pending application for a senior judgeship. Instead, on January 23, 2006, the Commission, *acting in ignorance*, gave its favorable recommendation as to Judge Terry's "fitness and qualifications to continue judicial service" – after which Chief Judge Washington, with knowledge of the relevant disqualifying facts supplied by my October 14, 2005 motion, made the appointment effective February 1, 2006. Consequently, Chief Judge Washington is rightfully charged – additionally -- with corrupting the D.C. "merit selection" process.

With respect to my judicial misconduct complaint herein against D.C. Superior Court Judge Holeman, prior complaints were filed against him by my mother, Doris L. Sassower, and by members and supporters of the Center for Judicial Accountability, Inc. (CJA) – the non-partisan, non-profit citizens' organization, co-founded by my mother and myself, of which she was then director and I coordinator.

The Commission dismissed my mother's complaint and supplement on December 16, 2004 on the boiler-plate

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false representations of his adherence to, and enforcement of, "high standards of ethical conduct" in connection with his application to be a judge on the D.C. Court of Appeals. Such is demonstrated by his answers to the questionnaire of the Senate Committee on Governmental Affairs, to which he swore on June 17, 2005 for purposes of his confirmation, discussed at footnote 17 of my October 14, 2005 motion.

ground that "they raised matters of law exclusively within the jurisdiction of the Court and beyond the statutory authority of this Commission." Upon her request for reargument, the Commission modified this to "matters of law exclusively within the discretion of the Court and beyond the statutory authority of the Commission" -- to which it joined an assertion that "to the extent [the complaint] raised matters of the Judge's bias and temperament, the Commission found insufficient cause to proceed.".

Apart from the fact that the Commission did not identify the supposed "matters of law" that are "exclusively within the jurisdiction [or discretion] of the Court and beyond the statutory authority of the Commission"[6], the Commission's bald assertion on January 31, 2005 that it "found insufficient **[p. 7]** cause to proceed" with respect to "the Judge's bias and temperament" is a concession that matters relating to a judge's "bias and temperament" are within its purview.

This complaint rectifies the purported "insufficien[cy]" of the prior showing as to Judge Holeman's "bias and temperament". Indeed, it provides record proof so pervasive and resounding as to warrant Judge Holeman's removal from the bench – as likewise the removal of D.C. Superior Court and Court of Appeals judges complicit in that misconduct.

Summarizing this record proof are my accompanying 119-page appellant's brief and 161-page supplemental fact

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6 Judge Holeman's misrepresentations by his sworn answers to the questionnaire of the Senate Committee on Governmental Affairs in connection with confirmation to the D.C. Superior Court, as well as such other discrepancies as were noted by my mother's supplement (pp. 5-9), are neither "matters of law" nor within the Court's "jurisdiction" or "discretion". Such misconduct by a judicial candidate is within the Commission's purview based on Canon 5E of the Code of Judicial Conduct for the District of Columbia Courts.

statement[7] -- identical to the originals missing from the D.C. Court of Appeals files. The threshold and overarching appellate issue – consuming 96 pages of the brief -- is Judge Holeman's pervasive actual bias, as to which the supplemental fact statement provides a comprehensive chronological recitation, in further support of the brief's comprehensive legal showing. Both the brief and supplemental fact statement are copiously annotated with citations to my three- volume appendix of the record – which I am also supplying the Commission. Such record dispositively establishes an unremitting continuum of biased, dishonest, and intemperate conduct by Judge Holeman, spanning the course of the proceeding -- pre-trial, at trial, and post-trial.

The most particularized recitation of Judge Holeman's pervasively-biased pretrial conduct is presented by my *legally-sufficient* February 23, 2004 and March 22, 2004 motions for his disqualification for actual bias [A-265, A-375]. Verifying the complete accuracy of the recitations in these two motions will enable you to not only verify Judge Holeman's flagrant violation of his mandatory duty to disqualify himself pretrial, but, simultaneously, to verify the serious misconduct of D.C. Superior Court Chief Judge King, as well as of then D.C. Superior Court Criminal Division Presiding Judge Kramer[8], and her

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[7] These are being hand-delivered by CJA member and super-patriot, George McDermott, who previously filed with this Commission judicial misconduct complaints against Judge Holeman arising from this case. Mr. McDermott is graciously providing the Commission with his own copy of these documents, along with the three-volume appendix of the record, which he had the Court of Appeals file stamp on June 28, 2005.

[8] Judge Kramer is now an associate judge on the D.C. Court of Appeals – a fact discussed at ¶¶30, 44-45 of my October 14, 2005 motion. According to the questionnaire she completed for the Senate Committee on Governmental Affairs in 2005, she was Presiding Judge of the D.C. Superior Court Criminal Division from "Jan. 2002 - December 31, 2004", during which time she "worked daily with Chief Judge Rufus King to ensure the smooth operations of the Division" and

stand-in, then D.C. Superior Court Criminal Division Presiding Judge Cushenberry[9], [p. 8] when I urgently turned to them for "IMMEDIATE SUPERVISORY OVERSIGHT" over Judge Holeman, including by memoranda dated February 26, 2004, February 27, 2004, and March 18, 2004 [A-426; A-435; A-454; A-450]. Their wilful and deliberate failure to respond was in face of my express invocation of Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts – and notice that I would file judicial misconduct complaints against them for violation of their mandatory administrative and disciplinary responsibilities pursuant thereto [A-435-6].

Verifying the state of the record pretrial will also enable you to verify the corrupt conduct of Judges Glickman, Nebeker and Farrell, when, in face of the wilful inaction of D.C. Superior Court supervisory authorities King, Kramer, and Cushenberry, I turned to the D.C. Court of Appeals for emergency redress. This, with a petition for a writ of mandamus and prohibition for Judge Holeman's disqualification and for certiorari and/or certified questions of law as to my entitlement to venue in the U.S. District Court for the District of Columbia, pursuant to the venue provision of the disruption of Congress statute, as well as because of the lawlessness in D.C. Superior

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"established a weekly meeting of the Criminal Division judges to discuss matters...These meetings provided a means for judges to seek advice from colleagues on issues needing immediate resolution." (at p. 21). Among the other pertinent background facts she identifies: that she was a "Member, D.C. Superior Court Liaison Committee with Judicial Disabilities & Tenure Commission (1990-present)" (at p. 8) and that "As a member of the Joint D.C. Court of Appeals and Superior Court Advisory Committee on Judicial Conduct, [she] participated in the 1995 revision of the Code of Judicial Conduct for the District of Columbia Courts" (at p. 13).

9 On January 1, 2005, Judge Cushenberry succeeded Judge Kramer as Presiding Judge of the Criminal Division – having served as Deputy Presiding Judge under Judge Kramer from January 1, 2002 to December 31, 2004.

Court, protecting the government and railroading me to trial -- as evidenced by the case record, a full copy of which I transmitted. Indeed, so horrific was the record that my petition (at p. 1) and accompanying motion (at ¶¶20-22) expressly requested that the D.C. Court of Appeals take "appropriate action" against Judge Holeman and the U.S. Attorney, pursuant to Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts – with such encompassing investigation of, and "action" against, Judges King, Kramer, and Cushenberry[10].

Copies of my *unopposed* April 6, 2004 mandamus petition and accompanying motion are annexed as Exhibits D and E to my October 14, 2005 disqualification/transfer motion. Likewise annexed – as Exhibits F – I – are typed copies of my handwritten July 12/August 16, 2004 reconsideration motion and supporting papers which I wrote while incarcerated and which include my analysis of the *unsigned* April 8, 2004 order of Judges Glickman, Nebeker, and Farrell, denying my April 6, 2004 mandamus petition and accompanying motion[11].

[p. 9] Like my *legally-sufficient* February 23, 2004 and March 22, 2004 motions for Judge Holeman's disqualification – which have always been dispositive of my rights – so, too, my April 6, 2004 mandamus petition with its accompanying motion and my July 16/August 12,

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[10] Because the Court of Appeals did not then – or during the subsequent months of my incarceration -- take any "appropriate action" with respect to Judges King, Kramer, and Cushenberry by notifying this Commission and the Judicial Nomination Commission of their serious misconduct in my case, Judge Kramer was able to secure a recommendation to the D.C. Court of Appeals on September 30, 2004, Judge King was able to secure reappointment as D.C. Superior Court Chief Judge at about the same time, and Judge Cushenberry was able to become Presiding Judge of the Criminal Division on January 1, 2005– an appointment made by Judge King.

[11] My analysis of the fraudulent April 8, 2004 order appears at ¶¶41-62 of my July 12/August 16, 2004 reconsideration motion, annexed as Exhibit F to my October 14, 2005 motion.

2004 reconsideration motion, both expressly requesting that the judges of the D.C. Court of Appeals disqualify themselves or make disclosure pursuant to Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts.[12] The wilful and deliberate refusal of the Court's judges to confront my articulated bases for their disqualification and to make the disclosure therein specified – indeed their concealment of same – was highlighted by my *unopposed* July 28, 2005 reconsideration motion and my *unopposed* August 4, 2005 petition for *en banc* initial hearing[13] -- the direct predecessors to my *unopposed* October 14, 2005 disqualification/transfer motion, whose recitation of the facts giving rise to the Court's mandatory disqualification and disclosure obligations is throughout.

Copies of these July 28, 2005 and August 4, 2005 submissions are enclosed, as is my June 28, 2005 procedural motion on which they rest. Needless to say, the originals of these – and other substantiating record proof – should be in the D.C. Court of Appeals files.[14]

I look forward to giving testimony under oath to assist your investigation, as well as at the hearings for the removal of all of these judges for their knowing and deliberate corrupting of the judicial process in my case, causing vast and irreparable injury to me and my family – and the expenditure of tens, if not hundreds, of thousands of dollars, borne by the taxpayers, on needless court proceedings and my six-month incarceration. That

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12 *See* my October 14, 2005 motion: Exhibit E, ¶¶20-25; Exhibit F, ¶¶2(c), 2(d), 41-74.

13 *See* my July 28, 2005 reconsideration motion, ¶¶2(d), 24-25; my August 3, 2004 petition for *en banc* initial hearing, ¶¶9, 8 [¶10].

14 CJA's website, www.judgewatch.org, posts virtually the entire record in D.C. Superior Court and in the D.C. Court of Appeals – including my culminating January 10, 2006 letter to Chief Judge Washington. It is most conveniently accessed *via* the sidebar panel, "Disruption of Congress" – "The Appeal".

these judges could do what they did in my case – where the dispositive facts were always before them in documented and unambiguous fashion -- shows that they are capable of anything. Indeed, as my October 14, 2005 motion reveals (¶¶10, 34), the D.C. Court of Appeals' falsification of *Liteky* and cognizable grounds for judicial disqualification extends beyond this politically-explosive "disruption of Congress" case.

Thank you.

Yours for a quality judiciary,

s/

ELENA RUTH SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)
& Appellant *Pro Se*

Enclosures & cc's: *See* next page

[p. 10] Enclosures:

(1) my January 10, 2006 letter to Chief Judge Washington
(2) my October 14, 2005 motion & the Court's October 27, 2005 order
(3) my November 6, 2005 "conforming brief on the merits"
(4) my June 28, 2005 procedural motion
(5) my July 28, 2005 reconsideration motion
(6) my August 4, 2005 petition for *en banc* initial hearing

Separately transmitted:

(1) my June 28, 2005 appellant's brief & supplemental fact statement
(2) my three-volume appendix of the record

cc: D.C. Court of Appeals Presiding Judge Eric T. Washington (for himself & all complained-against D.C. Court of Appeals and Superior

Court judges) [By Certified Mail/RRR: 7001-0320-0004-7860-0480]

Thomas Abraham, Supervisory Case Manager/D.C. Court of Appeals

Dan Cipullo, Director/D.C. Superior Court Criminal Division

U.S. Attorney for the District of Columbia

ATT:

Assistant U.S. Attorney Roy McLeese, Appellate Division Chief

Assistant U.S. Attorney Florence Pan

Petitioner's October 16, 2006 letter-application to D.C. Court of Appeals Chief Judge Washington and the three-judge appellate panel (Judges Ruiz, Kramer, & Nebeker) for disqualification, disclosure, transfer, etc. *

By Express Mail

October 16, 2006

D.C. Court of Appeals
Chief Judge Eric T. Washington
Appellate Panel Judges: Vanessa Ruiz,
Noel Anketell Kramer, Frank Q. Nebeker

RE: ***Elena Ruth Sassower v. United States of America***
#04-CM-760 & #04-CO-1600
("Disruption of Congress" Case)

(1) Disqualification/Disclosure by the Appellate Panel & Transfer of these Consolidated Appeals to the U.S. Court of Appeals for the District of Columbia Circuit;
(2) Reconsideration of the Placement of these Consolidated Appeals on the Court's October 17, 2006 Summary Calendar;
(3) Reconsideration of Denial of Oral Argument;
(4) Submission of this Letter for the Record.

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* **Thereafter annexed as Exhibit B to petitioner's January 2, 2007 petition for rehearing, rehearing *en banc*, motion to vacate for fraud, lack of jurisdiction, disqualification, disclosure, & transfer (A-297)**

Dear Chief Judge Washington & Appellate Panel Judges Ruiz, Kramer, and Nebeker:

This letter constitutes my request that Judge Vanessa Ruiz, Judge Noel Anketell Kramer, and Senior Judge Frank Q. Nebeker – the three judges assigned to the October 17, 2006 summary calendar – disqualify themselves from my above-numbered consolidated appeals pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts and, failing to do so, that they make disclosure pursuant to Canon 3F. Such letter-application substitutes for the oral application I would have made at the October 17, 2006 oral argument of my appeals, had the panel not denied my September 10, 2006 letter-request for oral argument (Exhibit A), which they did, *without reasons*, by a September 15, 2006 order (Exhibit B). In so doing, the panel deprived me of the opportunity to make an oral application for their disqualification and for disclosure – combined relief which this Court's judges have refused to address, let alone identify, throughout the history of this case.

In issuing their *without reasons* September 15, 2006 order, prejudicing my substantial rights, the judges of the panel did not disclose their names. Rather, the order was represented to be "on behalf of the merits division assigned to consider this matter" and signed by the Court's Clerk, Garland Pinkston, Jr. According to Chief Deputy Clerk Joy Chapper, with whom I had a lengthy telephone conversation on September 20th and who stated to me that there is a "presumptive right" to oral argument, the "merits division" is the panel assigned to the appeal.

[p. 2] Ms. Chapper's only explanation for why the September 15, 2006 order did not identify the judges' names, whereas the myriad of orders which have denied my prior motions have, was that it is not the Court's

practice to disclose the composition of appellate panels until the Thursday before the scheduled calendar date. She stated that the names of the judges assigned to my appeals would be available on Thursday, October, 12th, when they would be posted on the Court's website.

On Thursday, October 12th, upon accessing the Court's website and discovering that Judges Ruiz, Kramer, and Nebeker were assigned to my appeals (Exhibit C), I telephoned Ms. Chapper to notify her of my adamant objection to the participation of Judges Nebeker and Kramer – each of whom I stated was absolutely disqualified and should have *sua sponte* declined to sit on these appeals based on their participation in events at issue, wherein they had not only demonstrated actual bias, but acquired an interest in the outcome of the appellate issues based thereon.

Ms. Chapper confirmed that Judges Nebeker, Kramer, and Ruiz would have been the "merits division" referred-to by the September 15, 2006 order. She further acknowledged that the placement of my consolidated appeals on the summary, rather than regular, calendar – whose consequence was to enable the appellate panel to deprive me of the oral argument to which I would otherwise have been entitled – might have been made by Judge Nebeker himself, as he is a senior judge and there is no preclusion of a senior judge from sitting on the panel of an appeal he has calendared. Such acknowledgment was in the context of my questions to her based on what she had told me on September 20th when I complained that the September 15, 2006 order had neither addressed nor identified the requests for information in my September 10th letter, *to wit*, (1) as to the basis upon which my appeals had been placed on the summary, rather than regular, calendar; (2) as to whether Chief Judge Washington had recused himself from any involvement in the calendaring, based on his actual bias and interest, as particularized by my February 22, 2006 judicial misconduct complaint to the D.C. Commission on

Judicial Disabilities and Tenure; and (3) the names of such other judges as were involved in the calendaring. Ms. Chapper's response, on September 20th, was to try to provide that requested information. She represented that Chief Judge Washington's participation is limited to handling the computer-generated seating assignments of the panels, which is done monthly. She explained that senior judges then do a "quick review" of the briefs and records on appeal scheduled for that month and make the determination as to their placement on either the regular or summary calendars. According to Ms. Chapper, this system of screening is pursuant to "internal operating procedures" which are not available – and the names of the senior judges making such determinations are also not available.

In our October 12th conversation, I asked Ms. Chapper what the proper procedure was to secure the disqualification of the appellate panel and, in particular, Judges Nebeker and Kramer. She stated she was unaware of any procedure and, indeed, that she was unaware of any prior instance in which the disqualification of an appellate panel member had been sought by either a lawyer or litigant.

Under such circumstances, and consistent with the informality of the oral application I would have made for disqualification/disclosure at the October 17th oral argument, I am proceeding by letter, **[p. 3]** rather than formal motion. In any event, as evident from the September 15, 2006 order, the panel has no problem treating a letter-request as a "motion".

More to the point, I have already made a dispositive motion addressed to the disqualification of Judges Nebeker, Kramer, and Ruiz, as well as the Court's other judges, for demonstrated actual bias and interest and, if denied, for disclosure. Among the six branches of this October 14, 2005 motion, unopposed by the U.S. Attorney:

> "removal/transfer of the appeals to the U.S. Court of Appeals for the District of Columbia Circuit by reason of the disqualification of this Court's judges, in the interest of justice, and pursuant to the venue provision of the 'disruption of Congress' statute, D.C. Code §10-503.18"; and
>
> "such other and further relief...including requesting an advisory opinion of the Advisory Committee on Judicial Conduct as to the mandatory obligations of this Court's judges to identify and adjudicate requests for their disqualification and for disclosure – if there is any doubt as to the disciplinary, if not criminal, consequences to the judges of wilfully concealing and ignoring such request" .

As pointed out by ¶48, Judge Ruiz chairs the Advisory Committee on Judicial Conduct – a position she still holds.

The fate of my unopposed October 14, 2005 motion, which was supported by my fact-specific 29-page sworn affidavit and nearly 180 pages of substantiating exhibits, is reflected by the cover of my "conforming brief on the merits" and recounted at pages 1-2 thereof. Although I had supplied nine full copies with the original motion, it was not decided by the *en banc* Court, as I had requested in conjunction with that branch of the motion as sought reconsideration/vacatur of the Court's October 5, 2005 order (Washington, Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman, Kramer) denying *en banc* initial hearing of the appeals. Rather, it was decided by Judges Reid, Glickman, and Nebeker – the very judges whose knowing disregard of mandatory disqualification/disclosure rules and falsification of *Liteky v. United States*, 510 U.S. 540 (1994), pertaining to disqualification was focally detailed by my motion. Without denying or disputing the accuracy of my motion's uncontested showing that their prior unsigned orders

were all "readily-verifiable as judicial frauds" (¶32), Judges Reid, Glickman, and Nebeker issued an unsigned five-sentence October 27, 2005 order denying the motion (Exhibit D) without identifying any of the facts, law, or legal argument it had presented, all dispositive of my rights. Totally concealed by this October 27, 2005 order – as likewise by their prior unsigned orders under the docket numbers of my consolidated appeals – was my requested relief for their disqualification and for the disqualification of the Court's other judges for pervasive actual bias and interest and, if denied, for disclosure by them, including as to specified extrajudicial facts.

[p. 4] Judges Reid, Glickman, and Nebeker then blocked me from judicially-challenging this fraudulent October 27, 2005 order by directing the Court's Clerk to accept "no further filings" from me, except for my "conforming brief on the merits, due on November 7, 2005" and my "conforming reply brief, if any, due within 21 days after the filing of appellee's brief on the merits". This direction, having no basis in fact and law, was entirely *sua sponte* – and afforded me *no* notice or opportunity to be heard, in stark contrast to *Corley v. United States*, 741 A.2d 1029 (1999), the sole case the order cited, prefaced by "*See*", connoting an inferential leap between my case and *Corley*.

The facts pertaining to this fraudulent and unprecedented October 27, 2005 order are recited by my January 10, 2006 letter to Chief Judge Washington (Exhibit E), reiterating my prior urgent and imploring telephone requests for his supervisory oversight pursuant to Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts. Chief Judge Washington did not respond, even to the limited extent of confirming, as expressly requested by my January 10, 2006 letter (at p. 3, in boldfaced type), that he personally examined the October 14, 2005 motion and the October 27, 2005 order; that he brought both to the attention of the Court's other judges for their personal review; and that neither he nor

they deemed it appropriate to recall the October 27, 2005 order and responsively adjudicate the October 14, 2005 motion.

This was recited by my February 22, 2006 complaint to the D.C. Commission on Judicial Disabilities and Tenure (Exhibit F).[1] Such complaint was not only against Judge Washington and Judges Reid, Glickman, and Nebeker. It was also against this Court's other judges who had participated in the succession of fraudulent orders shown by my October 14, 2005 motion to have concealed ALL the facts, law, and legal argument I had raised to deny me relief to which I was entitled, *as a matter of law* – including disqualification and disclosure. Among these judges, Judges Kramer and Ruiz, each of whom – without disqualifying themselves or making disclosure – had, by inaction, participated in the October 5, 2005 order denying my petition for *en banc* initial hearing of the appeals. As to Judge Kramer, my judicial misconduct complaint specifically encompassed her violations of her mandatory administrative and disciplinary responsibilities under Canons 3C and D of the Code of Judicial Conduct for the District of Columbia Courts, when, in her former capacity as D.C. Superior Court Criminal Division Presiding Judge, she failed to respond to my urgent requests for her supervisory oversight over

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[1] My January 10, 2006 letter and February 22, 2006 complaint were exhibits to my March 16, 2006 motion for permission to file an unopposed motion for a procedural order to extend my time to file my reply brief, due on April 5, 2006 (Exhibits G-1, G-2). Such were rejected for filing by a notice which stated that when I was ready to file my reply brief, I could "file a motion for permission to file a motion for leave, along with a lodged reply brief" (Exhibit G-3).

According to Supervisory Case Manager Thomas Abraham, who signed the notice and to whom I thereafter spoke, the rejection had been directed by Chief Judge Washington, in whole or in part, because of the annexed January 10, 2006 letter and February 22, 2006 complaint. Judge Washington's involvement and adherence to "the due process-less, unprecedented, and completely fraudulent October 27, 2005 barring order" is identified on the cover of my timely-filed reply brief.

D.C. Superior Court Judge Brian Holeman in connection with my two motions for his **[p. 5]** disqualification for pervasive actual bias.

In the interest of judicial economy, I rest this letter-application for the disqualification of Judges Nebeker, Kramer, and Ruiz on my October 14, 2005 motion particularizing their demonstrated actual bias and interest in the outcome of each of my four appellate issues (¶¶33-37), supplemented and reinforced by my January 10, 2006 letter and February 22, 2006 complaint, and by the above-recitation pertaining to the placement of my consolidated appeals on the summary calendar and the panel's denial my letter-request for oral argument. Should the judges of the panel not disqualify themselves based on this detailed showing[2], they must each address the specifics I have set forth, both as to themselves and as to their judicial brethren of which they have knowledge.

On the issue of this Court's consistent disregard and concealment of my repeated requests for disclosure of extrajudicial facts bearing upon its fairness and impartiality, I expressly call upon the panel to disclose their knowledge of the breathtaking extrajudicial fact, sufficient in and of itself to have motivated Judge Reid's lawless conduct and to have influenced their own. That fact, of which I became aware only weeks ago – and then by accident – is that Judge Reid has a twin brother, George Bundy Smith, a judge on New York's Court of

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[2] As to Senior Judge Nebeker, see: entirety of my October 14, 2005 motion, & also, in particular, ¶6 (& fn. 4), ¶42; my "conforming brief", at pp. 36-37 (& fn. 13) [second appellate issue-venue]; my January 10, 2006 letter (Exhibit E); my February 22, 2006 complaint (Exhibit F).

As to Judge Kramer, see: my October 14, 2005 motion, at ¶¶29-30, 44-5; my "conforming brief", at pp. 36-37 (& fn. 13) [second appellate issue-venue]; my January 10, 2006 letter; my February 22, 2006 misconduct complaint, at pp. 7-8 (& fn. 8, 9, 10).

As to Judge Ruiz, see: my October 14, 2005 motion, at ¶¶29, 48; my January 10, 2006 letter; my February 22, 2006 complaint.

Appeals from 1992 until just this past month. Such close familial relationship gave Judge Reid a direct, personal interest in hurting me and prejudicing my consolidated appeals. This, because the documented corruption of Judge Richard C. Wesley as a New York Court of Appeals judge, about which I had respectfully requested to testify at the May 22, 2003 Senate Judiciary Committee confirmation hearing – and for which I was arrested, prosecuted, convicted, and incarcerated for "disruption of Congress" – was not exclusive to Judge Wesley. It also was the documented corruption of her own twin brother and his New York Court of Appeals colleagues, all of whom participated and colluded in the on-the-bench judicial misconduct which was the basis of the Center for Judicial Accountability's opposition to Judge Wesley's confirmation to the Second Circuit Court of Appeals.[3]

[p. 6] It is hard to imagine that this Court's judges were not fully aware of such close familial relationship and had not had many interactions over the years with Judge Smith at social occasions and professional events, as likewise with other New York Court judges, including Judge Wesley himself.

Yet, this Court allowed Judge Reid to participate on panels rendering a succession of fraudulent orders which addressed NONE of the facts, law and legal argument I

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[3] Reflecting this is my March 26, 2003 written statement of opposition to Judge Wesley's confirmation, chronicling the documentary evidence of what Judge Wesley and his named Court of Appeals colleagues had done [A-1436], Judge Smith among them [A-1440, 1442].

Before I took the witness stand during the trial [A-1207-8], Judge Holeman ruled, without any objection having been made by the U.S. Attorney, that the March 26, 2003 written statement – which I had furnished to New York Home-State Senators Charles Schumer and Hillary Rodham Clinton and to the Senate Judiciary Committee, among others – was inadmissible because it was "opinion". The severe prejudice resulting from such incorrect and inconsistent ruling is highlighted, *inter alia*, at pages 79-82 of my "non-conforming" June 28, 2005 brief.

presented – all dispositive of my rights. Indeed, upon Judge Reid's first entry into this case -- participating with Judge Nebeker (& Judge Steadman) in a July 7, 2004 order which, *without reasons*, denied me release from incarceration – I made a July 16/August 12, 2004 motion for reconsideration, seeking, disqualification, disclosure, and transfer among its branches of relief.[4] Among the disclosure I sought was whether her decision-making was impacted by her professional and personal relationships with judges of "the New York Court of Appeals (past or present)" (¶65, underlining added).[5] Such requested disclosure was ignored and concealed by Judge Reid when she denied the motion and kept me incarcerated by a fraudulent September 16, 2004 order (with Judges Terry & Newman) that addressed NONE of the facts, law and legal argument I had presented – all dispositive of my rights. Judge Reid then continued to obliterate any semblance of judicial process in this case: exceeding even

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[4] A typed copy of the July 16/August 12, 2004 reconsideration motion, which I wrote, by hand, while incarcerated, is annexed as Exhibit F to my October 14, 2005 motion.

[5] Although the July 7, 2004 order was Judge Reid's first decision-making in this case, it was NOT Judge Nebeker's, whose disqualification was the third branch of relief sought by my July 16/August 12, 2004 reconsideration motion. As therein detailed (¶¶41-62), Judge Nebeker had previously rendered the fraudulent April 8, 2004 order (with Judges Farrell & Glickman) which denied my April 6, 2004 petition for a writ of mandamus and prohibition to disqualify Judge Holeman and the additional relief of certiorari and/or certification of questions of law as to my entitlement to venue of this case in the federal court pursuant to the venue provision of the "disruption of Congress" statute, without identifying any of the facts, law or legal argument I had presented, and denied my accompanying motion for a stay of trial and to disqualify the Court's judges without identifying my request for disclosure of facts bearing on their fairness and impartiality. As stated: "No judge participating in such [April 8, 2004] order can lay claim to being fair and impartial – or properly adjudicate the further proceedings it generated – all null and void by reason of Judge Holeman's violation of Rule 63-I – the subject of my mandamus petition." (at ¶62).

Judge Nebeker.[6] This includes in making a complete mockery and shambles of the course of the appellate proceedings since my filing of my June 28, 2005 motion for a procedural order – as evidenced by examination of the record underlying her July 14, 2005 order (with Judges Glickman & Pryor), her August 5, 2005 order (with Judges Glickman & Nebeker), and her October 27, 2005 order (with Judges Glickman & Nebeker). All the while, Judge Reid, with Judge Nebeker beside her, has ignored my requests for disqualification and disclosure – requests which have **[p. 7]** highlighted the disclosure that had been requested by my July 16/August 12, 2004 motion.

Judge Ruiz, as Chair of the Advisory Committee on Judicial Conduct, should be the first to address the violations of Canons 3E and F of the Code of Judicial Conduct for the District of Columbia Courts, more fully chronicled by my October 14, 2005 motion – and to state whether, in issuing with Judges Nebeker and Kramer the September 15, 2006 order, maintaining my consolidated appeals on the summary calendar and denying me oral argument, she had read my October 14, 2005 motion and was familiar with my January 10, 2006 letter and February 22, 2006 complaint based thereon. If so, it reinforces that she, no less than they, are disqualified for actual bias and interest.

Should the appellate panel not disqualify itself, as is its belated duty to do – and not transfer these appeals to the U.S. Court of Appeals for the District of Columbia Circuit, as requested by my October 14, 2005 motion (¶¶2(d), 47) – I request reconsideration of the placement of my consolidated appeals on the summary, rather than

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[6] No D.C. Court of Appeals judge participated in more orders in this case than Judge Reid: July 7, 2004, September 16, 2004, September 23, 2004, July 14, 2005, August 5, 2005, October 5, 2005, October 27, 2005. Judge Nebeker (who ties with Judge Glickman) follows next: April 8, 2004, July 7, 2004, October 14, 2004, August 5, 2005, October 5, 2005, October 27, 2005.

regular, calendar. Such placement on the summary calendar cannot be justified by any fair and impartial review of the briefs and record herein. Indeed, over and beyond the exceptional legal and constitutional importance of my four appellate issues, each of "first impression" and so-highlighted by my August 4, 2005 petition for *en banc* initial hearing of the appeals, the fraudulent July 14, 2005, August 5, 2005, and October 27, 2005 orders of Judges Reid and Nebeker, *et al.* make oral argument all the more critical, lest the panel be misled as to the facts and law on these consolidated appeals.[7] This, because these three orders wholly interfered with proper exposition of my appellate issues, *inter alia*, (1) by rejecting my original 119-page brief and 161-page supplemental fact statement[8], while refusing to address

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[7] I take this opportunity to clarify the *amicus curiae* brief of Jonathan Katz, Esq. for the D.C. Chapter of the National Lawyers Guild, in the following material respect. At page 4, he states "insufficient evidence was presented at trial to show that there was disorder or disruption caused by Appellant, other than the chairperson hitting his gavel." The implication is that the chairman hit the gavel in response to some "disorder or disruption" by me – when, as recited by my analysis of the videotape [A-1574, also A-1570], from which I testified from the witness stand [A-1247], it was to signify his adjournment of the hearing that Chairman Saxby Chambliss hit the gavel. It had nothing to do with anything I did or said

The corroborating videotape – constituting "celluloid DNA" – is in this Court's possession, so-ordered by Chief Judge Washington on March 15, 2006, in response to the U.S. Attorney's bad-faith and deceitful two-page motion to release evidence – which I demolished by my six-page March 8, 2006 opposing affidavit.

[8] As recounted by my January 10, 2006 letter to Chief Judge Washington (Exhibit E, p. 5), the originals of this "non-conforming" brief and supplemental fact statement, filed on June 28, 2005 – and which were to have been preserved in the Clerk's Office files – mysteriously disappeared. In the absence of any response from the Chief Judge, including to my request that he direct an inquiry into their whereabouts, I sent duplicate copies to the Clerk's Office [See fn. 3 to my March 8, 2006 affidavit in opposition to the U.S. Attorney's motion to release evidence].

For the convenience of all, the June 28, 2005 "non-conforming" brief" and supplemental fact statement are posted on CJA's website, www.judgewatch.org, accessible *via* the sidebar panel

the question as to **[p. 8]** the particularity required to establish pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky* and, based thereon, setting appropriate page limits for my brief ; (2) by refusing to allow the lodging of key original trial exhibits so as to enable appellate evaluation of Judge Holeman's refusal to admit them into evidence—although consented-to by the U.S. Attorney; (3) by refusing to incorporate into the record of these consolidated appeals the Court's record of my April 6, 2004 petition for a writ of mandamus, prohibition certiorari and/or certified questions of law, as well as its record of my October 6, 2004 "Emergency Appeal" for my release from incarceration to preserve appellate issues – although consented-to by the U.S. attorney; (5) by refusing a court conference pursuant to Rule 14 to resolve these and other procedural issues; (6) by restricting me to a completely generic 50-page brief; (7) by falsifying *Liteky* to pretend that judicial rulings cannot furnish grounds for disqualification; (8) by rejecting the filing of my motion to extend my 50-page brief by 20 pages – although consented-to by the U.S. Attorney; and (9) by rejecting the filing of my motion for permission to file a first-time extension to file my reply brief -- although consented-to by the U.S. Attorney – the consequence of which is that my reply brief addresses only the fraudulence of the factual exposition of the U.S. Attorney's opposing brief, not his legal citations.[9]

"'Disruption of Congress' –The Appeal", where the entire subsequent appellate record is posted.

[9] As the applicable law is fact-dependent, my reply brief demonstrated that the U.S. Attorney's legal citations, as likewise his improper and materially false "Issues Presented", rested on material facts which his opposing brief had either omitted, falsified, or distorted. But for the October 27, 2005 barring order, maintained by this Court, several of whose judges – including Judge Nebeker – come out of the U.S. Attorney's office for the District of Columbia, I would have made a formal motion to strike the U.S. Attorney's opposing brief as "an outright 'fraud on the court', intended to subvert the appellate process" and for sanctions and disciplinary and criminal referrals of the U.S. Attorney and his culpable Assistant U.S. Attorneys.

Finally, should the appellate panel fail to reconsider its September 15, 2006 denial of my request for oral argument and accept submission of my consolidated appeals "for consideration and decision" on October 17, 2006, as calendared, I request this letter be substituted for the denied oral argument.

In any event, this letter is submitted for the record of these consolidated appeals.

Yours for a quality judiciary,

s/

ELENA RUTH SASSOWER
Appellant *Pro Se*

[p. 9]
Enclosures:

Ex. A: Sassower's September 10, 2006 letter to D.C. Court of Appeals

Ex. B: September 15, 2006 order ("on behalf of the merits division")

Ex. C: D.C. Court of Appeals notice of panels for October 17, 2006 & pages 1-3 of summary calendar for October 2006

Such formal motion, however is not necessary – in view of the Court's mandatory disciplinary responsibilities pursuant to Canon 3D of the Code of Judicial Conduct for the District of Columbia Courts, cited in the conclusion of my reply brief (p. 20). Indeed, as there has been no response to my April 4, 2006 letter to U.S. Attorney Kenneth Wainstein, entitled "NOTICE OF INTENT TO SEEK SANCTIONS AND DISCIPLINARY & CRIMINAL REFERRALS", annexed to my reply brief's Certificate of Service, it would not offend due process, but rather serve it, by rejecting the U.S. Attorney's opposing brief based upon the fact-specific, record-based showing of my reply brief. To assist the Court in so-doing, annexed as Exhibit H is the certified mail/return receipt for that April 4, 2006 letter, along with a further copy of the letter itself.

Ex. D: October 27, 2005 order (Judges Reid, Glickman, & Nebeker)

Ex. E: Sassower's January 10, 2006 letter to Chief Judge Washington with its two attachments

Ex. F: Sassower's February 22, 2006 judicial misconduct complaint to the D.C. Commission on Judicial Disabilities & Tenure

Ex. G-1: Sassower's March 16, 2006 motion for permission to file
G-2: Sassower's March 16, 2006 unopposed motion for a procedural order
G-3: D.C. Court of Appeals return notice, dated March 24, 2006

Ex. H: Sassower's April 4, 2006 letter to U.S. Attorney Wainstein with certified mail/return receipt

cc: U.S. Attorney for the District of Columbia
ATT:
Florence Pan, Assistant U.S. Attorney
Roy W. McLeese, III,
Assistant U.S. Attorney
Professor David M. Zlotnick,
Counsel for *Amicus Curiae*
Professor Andrew Horwitz
Jonathan L. Katz, Esq., Counsel for *Amicus Curiae* D.C. National Lawyers Guild.

Petitioner's January 2, 2007 Petition to the D.C. Court of Appeals for Rehearing, Rehearing *En Banc*, Motion to Vacate for Fraud, Lack of Jurisdiction, Disqualification, Disclosure & Transfer

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[p. 1] **INTRODUCTION**

Pursuant to this Court's Rules 40 and 35, appellant *pro se* Elena Ruth Sassower hereby petitions for rehearing and rehearing *en banc* of the unsigned December 20, 2006 Memorandum Opinion and Judgment of Judges Vanessa Ruiz, Noel Anketell Kramer, and Frank Q. Nebeker, constituting a three-judge appellate panel.

This Court's Rule 40 requires that such petition "state with particularity each point of law or fact" that the panel has "overlooked or misapprehended". Rule 35 requires that the petition state that the decision "conflicts with controlling authority", necessitating consideration by the full court "to secure and maintain uniformity of the court's decisions" or that the case involves "questions of exceptional importance".

The panel's Memorandum Opinion and Judgment violates ALL cognizable adjudicative standards and is, in every sense, a judicial fraud, being insupportable factually, legally, and knowingly so. It affirms Sassower's conviction and sentence for "disruption of Congress" by materially falsifying her four appellate issues[1] and then disposes of each by false factual and legal assertions that are completely conclusory and which ignore ALL the contrary specific facts, law and legal argument she presented, because they are dispositive of her rights. This is accompanied by the panel's own fictionalized account of the "disruption of Congress" incident – for which it provides no record reference and whose fraudulence is verifiable from the videotape of the incident, in the possession of the Court. The dispositive nature of the videotape in establishing that what Sassower did at the U.S. Senate Judiciary Committee's

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[1] The "exceptional legal and constitutional importance" of these four appellate issues – each of "first impression", as to which the Court had the obligation to "make law" – was the basis for Sassower's August 4, 2005 petition for *en banc* initial hearing of the appeals.

May 22, 2003 judicial confirmation hearing could not constitute "disruption of Congress", *as a matter of law*, and that she was prosecuted on materially false and misleading prosecution documents – which any fair **[p. 2]** and impartial tribunal would have thrown out, "on the papers" – was centrally presented by Sassower's appeal, but is concealed, without adjudication, by the Opinion and Judgment.

Such Opinion and Judgment, making NO claim that Sassower had due process either before Judge Holeman or before this Court in any of the prior related proceedings is the latest unconstitutional manifestation of the actual bias and interest of the panel, whose disqualification Sassower had sought by an October 16, 2006 letter-application – the existence of which the Opinion and Judgment also conceals, without adjudication. Consequently, Sassower combines with this petition a motion to vacate the Opinion and Judgment for fraud and lack of jurisdiction. She additionally reiterates and renews her October 16, 2006 letter-application for disqualification of the panel and the Court, for transfer of these consolidated appeals to the U.S. Circuit Court of Appeals for the District of Columbia, and for disclosure, if such are denied.

THE PANEL ACTED UNCONSTITUTIONALLY & WITHOUT JURISDICTION IN RENDERING THE DECEMBER 20, 2006 OPINION AND JUDGMENT WHERE IT HAD NOT ADJUDICATED SASSOWER'S OCTOBER 16, 2006 LETTER-APPLICATION FOR ITS DISQUALIFICATION, DISCLOSURE, & TRANSFER OF THE APPEALS

A fair and impartial tribunal is the constitutional entitlement of every litigant and "a basic requirement of due process", *In re Murchison*, 349 U.S. 133, 136 (1955), *Holt v. Virginia*, 381 U.S. 131, 136 (1965), *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986), with the

appearance of impartiality a requisite for public confidence in the judiciary, *Scott v. United States*, 559 A.2d 745 (*en banc* 1989). It should be obvious that when judges conceal and disregard the existence of an application for their disqualification and for disclosure, they are conceding, by such conduct, that they cannot dispute the facts and law presented in support of the relief.

The specific facts as to the disqualification of all three panel members for demonstrated actual bias and interest, pursuant to Canon 3E of the Code of Judicial Conduct for the District of Columbia Courts, were particularized by Sassower's October 16, 2006 letter-application – four copies of which were received by the Clerk's Office on October 17, 2006 for distribution to Chief **[p. 3]** Judge Washington and the three panel members to whom it was addressed[2]. Such letter-application expressly substituted for the oral application Sassower would have made had the panel not denied her a right of oral argument, which it did *without reasons*.

The October 16, 2006 letter-application highlighted (at p. 5) that each of the panel members had an "interest in the outcome of each of [her] four appellate issues" in that they could NOT adjudicate the facts and law on which these four appellate issues rested without exposing the fraudulence of their prior orders – and those of the Court – in denying Sassower relief to which she had been entitled, *as a matter of law*. Additionally, the letter-application identified (at pp. 5-7) a "breathtaking extrajudicial fact" further establishing the bias and interest of the Court's judges, of which Sassower had only just learned because they had wilfully ignored all her

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[2] For the convenience of the Court, the original of this petition annexes, in addition to the December 20, 2006 Opinion and Judgment, a full copy of Sassower's October 16, 2006 letter-application, and the last page of the docket sheets for appeals #04-CM-760 and #04-CO-1600 reflecting the Clerk's Office's receipt of the letter-application and its submission to Judges Ruiz, Kramer, and Nebeker.

many requests for disclosure, beginning in April 2004, when she had first sought the Court's protection from Judge Holeman's lawless conduct by her petition for mandamus, prohibition, certiorari, &/or certification of questions of law.

Treatise authority holds:

> "So long as the affidavit [to disqualify] is on file, and the issue of disqualification remains undecided, the judge is without authority to determine the cause or hear any matter affecting the substantive rights of the parties", 48A Corpus Juris Secundum §145.
>
> "As a general rule...once a challenged judge has...been made the target of a timely and sufficient disqualification motion, he immediately loses all jurisdiction in the matter except to grant the motion and in some circumstances to make those orders necessary to effectuate the change.", §22.1, Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, Little, Brown & Company.

As set forth by the October 16, 2006 letter-application (at p. 2), this Court does not release the identities of the appellate panel until the Thursday before the scheduled calendar date – which **[p. 4]** was October 12, 2006. Nor does it have any procedure for securing the disqualification of the appellate panel, as for instance formal motion, as opposed to a letter-application.

Consequently, Sassower's October 16, 2006 letter-application was, in every respect, timely and sufficient – and especially as it rested on the succession of her prior motions for the disqualification of this Court's judges and for disclosure by them, each supported by her sworn affidavits. As highlighted by her letter-application (at pp.

3-5), none of these was more dispositive than her all-encompassing October 14, 2005 motion, on which she expressly rested, and as to which she called upon the panel to make disclosure pursuant to Canon 3F.

By reason thereof, the panel was without authority to render its December 20, 2006 affirmance, which must be vacated for lack of jurisdiction. If, not, the affirmance must be vacated for fraud, since, as hereinafter shown[3], it is, from beginning to end, a judicial fraud. Such Opinion and Judgment [hereinafter "Opinion"], rendered by a biased, self-interested tribunal, is utterly unconstitutional.

THE PANEL'S DECEMBER 20, 2006 OPINION AND JUDGMENT IS A JUDICIAL FRAUD, FURTHER DEMONSTRATING ITS PERVASIVE ACTUAL BIAS, BORN OF INTEREST

The panel's Opinion appears to be modeled on the U.S. Attorney's March 10, 2006 opposing brief, whose fraudulence was particularized by Sassower's April 4, 2006 reply brief, with a request (at p. 20) for sanctions and disciplinary and criminal referrals against him – a request reiterated by her October 16, 2006 letter-application (at p. 8, fn. 9).

Like the U.S. Attorney's opposing brief, which had improperly transmogrified Sassower's four appellate issues and then fashioned its deceitful argument, including false supporting facts, the Opinion employs the same tactic – disregarding Sassower's reply brief, as if it does not exist

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[3] The showing herein in necessarily limited by this Court's Rule 40(b), restricting petitions to 10 pages. Suffice to say, there is a great deal additional that would otherwise have been particularized as evidencing both the fraud and sloppiness of the panel's Opinion.

[p. 5] **Sassower's first appellate issue** is NOT that "the trial court erred in denying her motion for recusal based on bias" – which is an even more extreme falsification than the U.S. Attorney's opposing brief, which had presented the denial of her TWO disqualification motions as the first appellate issue.

As pointed out by Sassower's reply brief (at p. 1), the sufficiency of her two disqualification motions is "subsumed within a larger question":

> **"1. As evidenced from the course of the proceedings before Judge Holeman, was appellant entitled to his disqualification for pervasive actual bias meeting the 'impossibility of fair judgment' standard articulated by the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540?***
>
> A. Were appellant's February 23 and March 22, 2004 pretrial motions to disqualify Judge Holeman sufficient, as a matter of law, to require his disqualification for pervasive actual bias, divesting him of jurisdiction to 'proceed...further', pursuant to D.C. Superior Court Civil Procedure Rule 63-I – and was there any basis in fact and law for Judge Holeman's conduct and rulings challenged therein?
>
> B. Were Judge Holeman's subsequent pretrial, trial, and post-trial rulings further confirmatory of his pervasive actual bias – and were they factually and legally supported?" .

The asterisk to this first issue further specified that it encompassed

> "whether Judge Holeman's rulings, individually and collectively, were so egregiously 'erroneous' and prejudicial as to require reversal".

This first appellate issue – going directly to Sassower's unequivocal and repeated assertions before this Court that Judge Holeman had denied her due process – is concealed by the panel and not adjudicated. And the reason is obvious. Appellate review of Judge Holeman's conduct and rulings[4] is completely dispositive of her right to reversal, *as a matter of law*, as they are factually and legally insupportable and so multitudinous and egregious as to meet the *Liteky* standard for disqualification for "pervasive actual bias". Indeed, as explicitly identified by Sassower's briefs, any one of a myriad of Judge Holeman's rulings would suffice for reversal, *as a* **[p. 6]** *matter of law* – as, for instance, his denial of Sassower's right to testify at trial as to the purported "disruption of Congress" incident and her intent (reply brief, at p. 8).

Having thus obliterated that Sassower's first appellate issue seeks adjudication as to whether Judge Holeman's conduct and rulings over the course of the proceeding are factually and legally supportable and meet the *Liteky* standard for disqualification – which is precisely what the U.S. Attorney had done – the panel does not even confront the factual and legal basis of ANY of the conduct and rulings challenged by Sassower's two motions for Judge Holeman's disqualification, or even Judge Holeman's grounds for denying the motions – again, reflective of its knowledge that even as so-limited his rulings cannot be justified.

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[4] These rulings are itemized by the Table of Contents of both Sassower's original June 28, 2005 appellant's brief and her November 6, 2005 "conforming brief on the merits".

Nonetheless, the Opinion devotes four paragraphs to affirming Judge Holeman's denial of Sassower's "motion for disqualification" (at pp. 2-3), the last sentence of which uses the plural "motions". Acknowledging Sassower's reliance on *Liteky*, the panel does not identify her stated basis for such reliance – as, for instance, this Court's decision in *Fischer v. Estate of Flax*, 816 A.D.2d 1, 12 (2003), recognizing *Liteky* as the "governing standard[]". This permits the panel to falsely purport, "it is not clear that the extrajudicial source reasoning from *Liteky* would apply to judicial recusal in D.C. Superior Court." – which it does by simplifying the false and nonsensical arguments in the U.S. Attorney's opposing brief (fn. 8). The panel then avoids "reach[ing] that question" of the applicability of *Liteky* to judicial recusal in D.C. Superior Court by falsely pretending that Sassower's allegations "were insufficient to warrant disqualification...under the standard set forth in *Liteky*." In so doing, the panel does not identify a single one of Sassower's supposedly "insufficient" allegations. Rather, it rests on a bald claim that her "motion for disqualification was wholly lacking in merit, as her allegations focused almost exclusively on unfavorable rulings made by the trial judge." This is false. Sassower's February 23, 2004 motion [A-265] was not about rulings at all, as Judge Holeman had then made none. Nor was her March **[p. 7]** 22, 2004 motion [A-375] about "unfavorable" rulings, but about rulings she showed to be "outright judicial lies", being factually and legally unsupported and insupportable

It is based on this <u>total falsification and concealment of what Sassower's disqualification motions had presented</u> that the panel asserts she made "No...showing" of Judge Holeman's "deep-seated favoritism or antagonism that would make fair judgment impossible" (at p. 3), as *Liteky* requires. Indeed, the panel goes further: proclaiming that Sassower failed to provide "any reason to question the impartiality of the trial judge" Both declarations – echoing those made in

the U.S. Attorney's opposing brief – are utter frauds, which is why the panel does not substantiate them in any way. Thus it does not identify any of the specifics of Sassower's two pretrial disqualification motions[5] or the discussion of these motions in her briefs (brief: at pp. 4-15; reply: at pp. 8-10). This includes what Sassower's motions and briefs recited as to the "extrajudicial source" of Judge Holeman's demonstrated bias, "beyond the four corners of the courtroom", even while the Opinion falsely purports it to be the essence of what is required to disqualify a judge (at p. 2).

Sassower's second appellate issue is NOT that "the trial judge erred in holding that she was not entitled to have her case removed to the United States District Court for the District of Columbia", but whether the venue provision of the "disruption of Congress" statute, D.C. Code §10-503.18, entitled her to removal/transfer,

> "where, additionally, the record establishes a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government.".

The panel's obliteration of this added factor replicates precisely what the U.S. Attorney did in his opposing brief, exposed by Sassower's reply (at pp. 2, 11-13). The Opinion's one-paragraph adjudication (at p. 3) does NOT adjudicate whether such additional factor entitled Sassower to the requested removal/transfer – here, too, because it is dispositive of her right to [p. 8] reversal. Indeed, the significance of the record in establishing the disqualifying actual bias and interest of both Judge Holeman and this Court was highlighted by

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5 The Opinion – in addition to not supplying the dates of either disqualification motion – falsely purports in its brief paragraph devoted to the proceedings (at p. 2) that they were made "At trial". This, despite the fact that Sassower's first issue had expressly identified them as "pretrial".

her reply brief (at pp. 36-7) in response to the U.S. Attorney's deceit on the subject.

Sassower's third appellate issue is NOT that "this court should hold in the first instance that D.C. Code §10.503.16(b)(4) is unconstitutional both as written and as applied to her case". It was the U.S. Attorney – not Sassower – who contended that she had not raised the issue before Judge Holeman.

The Opinion's two-paragraph adjudication (at pp. 3-4) replicates the U.S. Attorney's bald claim in asserting "Nowhere in the copious proceedings at the trial court did she challenge the constitutionality of D.C. Code §10-503.15(b)(4) or its application to her situation" (at p. 3) – ignoring completely Sassower's contrary presentation in her reply brief (at pp. 13-15) that she had sufficiently raised such constitutional challenges and that it was Judge Holeman's misconduct that interfered with and precluded further exposition and his appropriate adjudications with respect thereto. Likewise, the panel regurgitates the U.S. Attorney's deceit in claiming "it is patently clear that this statute is constitutional on its face" – citing to its cases of *Armfield v. United States*, 811 A.2d 792 (2002), and *Smith-Caronia v. United States*, 714 A2d 764 (1998) – also ignoring completely Sassower's contrary presentation, both in her brief (at pp. 36-41) and reply (at pp. 15-16), as to the inapplicability of *Armfield* and *Smith-Caronia* to the very different constitutional challenge which her case presents to the statute, *as written*.

Only in upholding the constitutionality of D.C. Code §10-503.15(b)(4), *as applied*, does the Opinion allude to any "suggestion" or "argument" Sassower made – and such is wholly deceitful, as examination of her reply brief resoundingly shows (at pp. 15-18). Indeed, the panel's pretense that because the statute "clearly applies to 'any hearing...before any committee...of the Congress", therefore, Sassower's "suggestion that the statute was

unconstitutionally applied because of the difference between a committee hearing and a session of Congress does not create a **[p. 9]** viable distinction" is even more fraudulent than the U.S. Attorney's similar deceit, as even the U.S. Attorney's deliberate garbling of Sassower's challenge had recognized that it was addressed to the statute, *as written*.

As to the true grounds for Sassower's challenge to the statute, *as applied* (Br. 41-46), the Opinion entirely conceals them as it purports that they rest "on factual assertions that were properly presented to the jury, which was "'entitled to disregard what [s]he said in the courtroom and base its verdict on what [s]he actually did'" – repeating, including by its quote from *Armfield*, the U.S. Attorney's identical claim, resoundingly rebutted by her reply brief (at pp. 16-18). As stated by her reply:

> "Because what occurred at the Senate Judiciary Committee's May 22, 2003 hearing is videotaped – and therefore incontrovertible – the U.S. Attorney conceals the very existence of the videotape...
>
> His argument then rests on discounting the existence of what the videotape documentarily establishes. Thus he states that the jury 'was entitled to disregard appellant's interpretation of what transpired' (at p. 38) – never identifying that that 'interpretation' rested on the videotape, for which Sassower had provided a written analysis [A-1574, A-1565, A-1604] whose accuracy was uncontested by the U.S. Attorney...
>
> The videotape is not supplanted by the adverse jury verdict. It is dispositive proof that what Sassower actually did could never support a 'disruption of Congress' charge – without rendering it unconstitutional *as applied*. This is

> why, at every stage of this case, the U.S. Attorney has concealed what it shows...". (at p. 17, underlining in the original).

The panel, which has had the videotape, does not deny or dispute this. Nor Sassower's further assertion, also from her reply brief, that.

> "The videotape is 'celluloid DNA' as to the events at issue in the 'disruption of Congress' charge. It establishes that the prosecution's case was bogus, malicious, and brought on materially false and misleading prosecution documents – an assertion Sassower explicitly made in her October 30, 2003 discovery/disclosure/sanctions motion [A-47-8], without contest from the U.S. Attorney. Such uncontested assertion itself required any fair and impartial tribunal to throw out the case on the papers, *as a matter of law*. Specifically, the videotape establishes that the so-called 'disruption' consisted of Sassower's respectful request to testify in opposition to Judge Wesley's confirmation – a request not made until after the presiding chairman, Senator Saxby Chambliss, had already announced the hearing 'adjourned'." (at p. 7, underlining in the original).

[p. 10] Instead, the panel commits outright fraud at the outset of its Opinion (at p. 1) by its unsourced recitation of the "disruption of Congress" incident – completely belied by the videotape, stenographic transcript [A-1552-3, A-564], and Sassower's analysis of each [A-1574].

Sassower's fourth appellate issue is NOT that "the trial court erred in denying her motion under D.C. Code §23-110, which challenged her sentence as illegal and unconstitutional". The denial of that motion is not Sassower's fourth appellate issue, but part of her first – being among Judge Holeman's post-trial rulings which

are insupportable factually, legally and demonstrative of his "pervasive actual bias". The fourth issue was:

> **"Whether, when Judge Holeman suspended execution of the 92-day jail sentence he imposed upon appellant, his terms of probation were appropriate and constitutional and whether, when appellant exercised her right to decline those terms, pursuant to D.C. Code §16-760, it was legal and constitutional for him to double the 92-day jail sentence to six months?"**

Such concealment of this explicit issue resembles the U.S. Attorney's reframing of this fourth issue as Sassower's "challenging her sentence". The Opinion's devotes one paragraph (at p. 4) to the issue, asserting that because Sassower "has completed serving her six-month sentence, her sentencing claims are now moot". Such boilerplate is altogether insufficient – as is evident from the panel's own cited decision of *McClain v. United States*, 601 A.2d 80 (1992), as likewise the *en banc* decisions to which it refers, *United States v. Edwards*, 430 A.2d 1321 (1981), *Lynch v. United States*, 557 A.2d 580 (1989). Indeed, such caselaw establishes the deceitfulness of the U.S. Attorney's argument as to mootness, objected-to by Sassower's reply brief (at pp. 18-20), to which, here too, the Opinion makes no mention or adjudication.

CONCLUSION

This Court's judges, both individually and collectively, are responsible for ensuring the vacatur of the panel's December 20, 2006 Opinion and Judgment and transfer of the appeals to the U.S. Circuit Court of Appeals for the District of Columbia for adjudication consistent with constitutionally-required due process.

s/ Elena Ruth Sassower

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(2)

No. 07-228

FILED

OCT 2 6 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the

SUPREME COURT OF THE UNITED STATES

October Term 2007

ELENA RUTH SASSOWER,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR REHEARING

ELENA RUTH SASSOWER
Petitioner, *Pro Se*
16 Lake Street, Apt. 2C
White Plains, New York 10603
914-421-1200

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PETITION FOR REHEARING

I

The Official Misconduct of the Court's Clerk & His Staff Warranting Recall/Vacatur

This petition for rehearing of the Court's October 1, 2007 order denying the petition for a writ of certiorari [RA-1] is necessitated by the official misconduct of the Court's Clerk and his staff. In wilful violation of this Court's rules, they have refused to file and transmit to Chief Justice Roberts, as Circuit Justice for the District of Columbia, and, upon his determination, to the Court, two motions dispositive of the Court's mandatory supervisory and ethical duties with respect to the cert petition.

These two dispositive motions, each pursuant to this Court's Rule 22.1 and further invoking Rule 21, are:

> (1) petitioner's September 17, 2007 motion [RA-2] to compel the United States Solicitor General to file the Government's response to her cert petition; and
>
> (2) petitioner's two-branch October 9, 2007 motion [RA-24] for: (a) clarification of the Chief Justice's April 26, 2007 opinion in *Boumediene, et al. v. George W. Bush, et al.*, 127 S.Ct. 1725, which the Clerk's Office represented would be the basis for its rejecting petitioner's motion for an extension of time to file a petition for rehearing; and (b) recall/vacatur of the Court's October 1, 2007

order and adjudication of petitioner's September 17, 2007 motion.

The Clerk's Office has further concealed the very existence of these motions by wilfully failing to record their receipt and disposition on its computerized docket of the case [RA-45][1], thereby creating a false case history.

The Clerk has additionally prevented the Chief Justice from administratively addressing his misconduct by apparently not transmitting to the Chief Justice, as petitioner requested [RA-53], her separate October 9, 2007 letter-complaint [RA-55] and its supporting proof, *to wit*, her unfiled and undocketed October 9, 2007 motion – and its physically annexed unfiled and undocketed September 17, 2007 motion.

The Clerk and his staff have refused to respond to petitioner's telephone inquiries as to the status of her October 9, 2007 motion and its accompanying alternative letter-complaint to the Chief Justice. Nor have they sent her any written communication about them [RA-60].[2] Petitioner has, therefore, been burdened with perfecting this petition for rehearing so as not to forfeit her rights.

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[1] There has been no change in the docket since the Court's October 1, 2007 order.

[2] Presumably the original and 10 copies of the October 9, 2007 motion, delivered by the U.S. postal service to the Court on October 10, 2007 and which the Court's Office of Legal Counsel thereafter stated to petitioner were being "processed" by the Clerk's Office [RA-63], are somewhere in the Clerk's Office or the courthouse.

According to the Court's Office of Legal Counsel, the Court has "no formal procedures" for complaints against the Clerk and his staff. However, it has informed petitioner that she could send a complaint directly to the Chief Justice at the courthouse. She has done this [RA-57], simultaneous with her filing of this rehearing petition.

Canon 3B(2) of the Code of Conduct for United States Judges – to which this Court's Justices look for guidance[3] and which binds all other federal judges – states:

> "A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge."[4]

Pursuant to Rule 28 U.S.C. §671(a):

> "The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the

---

[3] Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).

[4] Similarly, Canon 3C(2) of the American Bar Association's Model Code of Judicial Conduct states:

> "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties."

Such Canon has been adopted and replicated in rules binding state and District of Columbia judges.

> approval of the Court or the Chief Justice of the United States".

The Chief Justice's administrative determination of petitioner's complaint against the Clerk and his staff, including whether its disposition should be by the Court, takes precedence over the Court's vote on this rehearing petition since a finding that petitioner's September 17, 2007 motion [RA-2] complied with the Court's rules, entitling her to its filing and transmittal to the Chief Justice prior to entry of the Court's October 1, 2007 order denying her cert petition [RA-1], would warrant recall/vacatur of the order. Such would moot this rehearing petition.

Reinforcing the appropriateness of recall/vacatur of the October 1, 2007 order – whether by the Chief Justice or the Court – is that the Clerk's misconduct was not "harmless". Petitioner's September 17, 2007 motion entitled her to the relief sought: a "request", if not order, for the Solicitor General's response to the cert petition. This, by its showing that the Court cannot accept the Solicitor General's waiver of the Government's response to the cert petition [RA-14] as it violates his mandatory obligations under ethical rules of professional responsibility, as well as his duty before the Court – unaccompanied, as it is, by any notification that he is bringing the fact-specific, documentary evidence of judicial and prosecutorial corruption that is the subject of the cert petition [RA-15-23] to the attention of disciplinary and criminal authorities, or by any statement affirmatively endorsing the Court's granting of cert.

The September 17, 2007 motion highlighted the importance the Court attaches to the Solicitor

General's views by citing the Chief Justice's own article, "*Riding the Coattails of the Solicitor General*", (Legal Times, March 29, 1993) [RA-9]. It argued that the Solicitor General's response to the cert petition is threshold to the Court's proper consideration of the petition – especially to recognition of its own mandatory obligations embodied in the petition's fourth and culminating "Question Presented" [RA-15-17]:

> "4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?
>
> (1) to make referrals to disciplinary and criminal authorities
>
> (2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance..."

As for petitioner's October 9, 2007 motion [RA-24], it detailed the Clerk's misconduct in connection with her September 17, 2007 motion, showing that the Clerk's Office had no legal basis for rejecting the motion [RA-38] and that the Clerk had refused to respond to petitioner's September 21, 2007 letter on the subject [RA-46], whose serious and substantial questions included whether other petitioners in criminal cases had their motions to compel the Solicitor General's response similarly rejected [RA-50]. The motion closed as follows:

"the possibility that the Clerk's Office is functioning in this case – and in other criminal cases – to 'protect' the Government from accountability by blocking the Court from deciding motions to compel the Government's response frustrates the Justices from appropriate consideration of cases such as this where the criminal justice system has been hijacked for the ulterior political and personal purposes which [the cert] petition reflects.

32. Criminal defendants who make the long, arduous, and expensive journey to this Court in vindication of their lives, liberty, and property must not be denied the Government's response to particularized charges of collusive conduct between judges and prosecutors, as here at issue. Compelling such responses would assist the Court so that, even in denying cert review, it may advance justice by discharging its supervisory and ethical duties to refer 'reliable evidence' of judicial and prosecutorial corruption and misconduct to disciplinary and criminal authorities, as Canon 3B(3) of the Code of Conduct for United States Judges requires.

33. Examination of [petitioner's] September 17, 2007 motion – and [the] cert petition on which it is based – shows they are dispositive of the Court's supervisory and ethical duties both as to the motion and the petition." [RA-41].

II

Upholding Judicial Independence & its Meaning for The First Amendment and The Rule of Law

On September 19, 2007 – the very day the Clerk's Office was returning to petitioner her September 17, 2007 motion [RA-52] – Chief Justice Roberts was speaking at Syracuse University. The occasion was the dedication of a new building at its communications school, the façade of which is wrapped in the 45 words of the First Amendment. Much of the Chief Justice's speech focused on the importance of an independent judiciary, without which the First Amendment cannot "ensure[] that the voice of the real non-conformist, the upstart, the underdog, the unfashionable can also be heard":

> "'Do not think for a moment that those words alone will protect you... Without an independent judiciary to give substance to the constitutional text as law, the words are nothing but empty promises. Our Framers understood that constitutional guarantees amount to little without courts with the power to interpret them fairly and impartially...free from political pressure and outside influence."[5]

---

[5] The Chief Justice's September 19, 2007 speech was broadcast nationally on October 20, 2007 by c-span's "America & the Courts" program and is accessible from its website, www.c-span.org.

This case bears out the Chief Justice's words. At bar, political speech that is at the very heart of the First Amendment – a citizen's respectful request to testify in opposition to a federal judicial nominee at his public Senate Judiciary Committee confirmation hearing – was held to be "disruption of Congress" by courts dependent on Congress and so compromised by that dependency and other conflicting interests that they utterly trashed the rule of law.

The entirety of the 36-page petition for a writ of certiorari was devoted to showing how the District of Columbia judiciary – both its Court of Appeals and trial level Superior Court judges – corrupted the judicial process to "protect" Congress and others. This, by wilfully and deliberately failing to confront their disqualifying relationships, interests, and demonstrated actual bias, which petitioner had set forth again and again in disqualification/disclosure motions, whose very existence and content the judges concealed and falsified in orders and decisions so factually and legally baseless as to be unconstitutional under the Due Process Clause, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960) – each one reinforcing the "impossibility of fair judgment" standard for disqualification for pervasive actual bias, articulated by this Court in *Liteky v. United States*, 510 U.S. 540 (1994). Culminating this abomination: the D.C. Court of Appeals' Memorandum Opinion and Judgment [A-13].

The fraudulence of that Memorandum Opinion and Judgment is detailed by petitioner's petition to the D.C. Court of Appeals for rehearing and rehearing *en*

banc, joined with a motion to vacate it for fraud and lack of jurisdiction, and for disqualification, disclosure, and transfer [A-297-310]. Such highlighted that the Memorandum Opinion and Judgment, after concealing, without adjudication, petitioner's motion to disqualify the appellate panel and D.C. Court of Appeals [A-282-296], not only covered up the pervasive actual bias of the D.C. Superior Court trial judge, none of whose rulings it examined [A-14-16], but falsified the "disruption of Congress" incident [A-14] – *as verifiable from the videotape and transcript of the Senate Judiciary Committee hearing* [A-178-182][6] – and falsified petitioner's First Amendment challenge to the constitutionality of the disruption of Congress statute [A-17-18] – *as verifiable from her appeal brief* [A-240-251]. This, to uphold a conviction and statute that would otherwise have had to be overturned on First Amendment grounds.

Nor was petitioner's challenge to the disruption of Congress statute, *as written and as applied* [A-240-251], her only First Amendment issue before the D.C. Court of Appeals. She had also challenged, including on First Amendment grounds, the trial judge's probation terms for suspending execution of the 92-day jail sentence he had imposed [A-252-256][7].

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6 "Petitioner sought to lodge a copy of the videotape with the Clerk's Office in support of [her] petition [for a writ of certiorari], but was told that such would be accepted only if the Court requests same..." [footnote 3 of cert petition]. Petitioner asks that the Court request the videotape or, at very least, that the Court request the Solicitor General's response to her analysis of it and the transcript [A-179-182].

7 Likewise, the First Amendment was focal in the *amicus*

Among these probation terms:

> (1) that she write letters of apology to the Senators and federal judicial nominee, expressing remorse for "any inconvenience" caused by her "disruption of Congress" [A-200-201];
>
> (2) that she have "no verbal, written, telephonic, electronic, physical, or other contact" with those Senators and their staff (albeit some relaxation of the ban with respect to her home-state Senators – Senator Hillary Rodham Clinton and Charles Schumer) [A-200];
>
> (3) that she "stay-away" from the entire Capitol complex of all Capitol buildings and grounds [A-199-200]; and
>
> (4) that she submit to the trial judge daily time records, accurate to 1/10-hour increments, of her work as coordinator of the Center for Judicial Accountability, Inc. (CJA) [A-198].

As chronicled by the cert petition [pp. 14-20], the trial judge vindictively retaliated against petitioner

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curiae brief of Professor Andrew Horwitz, an expert on the judicial use and abuse of probation conditions in criminal sentencing and author of "*Coercion, Pop-Psychology and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*", 57 Washington & Lee Law Review 75 (2000), which he filed in the D.C. Court of Appeals in support of petitioner's consolidated appeals.

for exercising her right to decline his probation terms by immediately doubling the 92-day jail sentence to six months and incarcerating her "forthwith" [A-201-203]. The D.C. Court of Appeals then evaded petitioner's constitutional challenge to the probation terms and six-month sentence. It kept her jailed for six-months without addressing any of the facts, law, and legal argument she had presented in motions for release pending appeal, including a motion and expedited appeal to prevent mootness of that appellate issue. Its Memorandum Opinion and Judgment then baldly purported that since she had served her six-month sentence, the appellate issue was moot [A-18].

It may never be known whether the Chief Justice's September 19, 2007 speech, linking judicial independence with the vitality of the First Amendment and the rule of law, was influenced by this case, whose cert petition was distributed to the Justices on August 29, 2007 [RA-45] – and which had been the subject of two prior successful motions to the Chief Justice, as Circuit Justice, annexing the petition for rehearing and rehearing *en banc* and a draft of the cert petition. One thing is certain, however. The cert petition's chronicling of self-interested, pervasively biased and corrupt judicial conduct by two levels of the D.C. judiciary offers a decisive gauge of the Chief Justice's true commitment, and that of the Associate Justices, to judicial independence, the First Amendment, and the rule of law.

On rehearing, that commitment must be manifested by the Court's discharge of its supervisory and ethical duties by the granting of certiorari and

referrals of the D.C. judges and collusive federal prosecutors to disciplinary and criminal authorities. Only this will show that the Court will keep the judiciary's own house in order, without interference of the other governmental branches – a prerequisite for judicial independence.

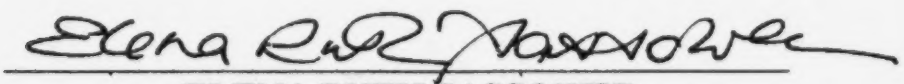
CONCLUSION

Both sections of this petition for rehearing are about self-policing. The first section: the Court's policing of its own Clerk and his staff, operating in wilful and deliberate disregard of published Court rules and basic standards of professionalism. The second section: the Court's policing of the District of Columbia's highest court, whose wilful and deliberate violations of constitutional, legal, and ethical standards are so total as to compel this Court's appellate and supervisory jurisdiction to restore some semblance of the rule of law to that court – and to the comparably lawless D.C. Superior Court.

Neither relief is discretionary.

CERTIFICATE OF GOOD FAITH

I, ELENA RUTH SASSOWER, am the petitioner *pro se* herein and have written the foregoing petition for rehearing, which I do hereby affirm and declare conforms with the requirements of this Court's Rule 44.2 in that it is "limited to intervening circumstances of a substantial and controlling effect" and "presented in good faith and not for delay".



ELENA RUTH SASSOWER

Dated: October 26, 2007
White Plains, New York

Exhibit 1-a to petitioner's October 9, 2007 motion to compel Solicitor General's response

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 1, 2007

Ms. Elena Ruth Sassower
16 Lake Street
Apartment 2C
White Plains, NY 10603

Re: Elena Ruth Sassower
v. United States
No. 07-228

Dear Ms. Sassower:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
s/
William K. Suter, Clerk

Petitioner's September 17, 2007 motion to compel Solicitor General's response

No. 07-228

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2006

ELENA RUTH SASSOWER,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

MOTION TO "REQUEST", IF NOT ORDER,
THE UNITED STATES SOLICITOR GENERAL
TO FILE THE GOVERNMENT'S RESPONSE
TO PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia:

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the innocent petitioner *pro se* in the "disruption of Congress" case herein in which the

Government is a party, represented before this Court by the United States Solicitor General, substituting for the United States Attorney for the District of Columbia.

2. I bring this motion to request that the Chief Justice, as the Circuit Justice for the District of Columbia, "request" the Solicitor General to file the Government's response to my Petition for a Writ of Certiorari to the District of Columbia Court of Appeals, or, alternatively, that the Chief Justice present this motion to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General to file the Government's response to my Petition.[1] Pursuant to this Court's Rule 15.1, it appears that such "request" may take the form of an order, thereby mandating the Solicitor General's compliance.

3. My Petition for a Writ of Certiorari was docketed on August 21, 2007 (Exhibit A) and is presently calendared for conference on September 24, 2007.

4. Notwithstanding the Court's Rule 15.3 gives a respondent 30 days from the docketing of a petition for a writ of certiorari to file a brief in opposition – thereby affording the Solicitor General until September 20, 2007 – he took a mere six days from the docketing of my 36-page Petition[2] and its

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[1] In such event, I am herewith filing this original motion with 10 copies pursuant to this Court's Rule 21.2c

[2] I take this opportunity to thank the Chief Justice for granting my motion to exceed page limits, as likewise my motion for an extension of time to file my Petition – and

substantiating 310-page appendix to notify the Court, on August 27, 2007, that:

> "The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court." (Exhibit B, underlining added).

5. Unless the Solicitor General is to be exempted from mandatory ethical rules of professional responsibility applicable to every lawyer, let alone exempted from his transcendent responsibilities as a Government lawyer, indeed, one in highest authority, this Court cannot accept such waiver unaccompanied, as it is, by a statement of the Solicitor General that he is bringing the fact-specific, documentary evidence of judicial and prosecutorial corruption that is the subject of my Petition to the attention of "appropriate professional authority". Quite simply, the Solicitor General's waiver herein violates his mandatory obligations under Rule 8.3 of the District of Columbia's Rules of Professional Conduct and Rule 8.3 of the American Bar Association's Model Rules of Professional Conduct, which it mirrors, as well as his duty as the Government's representative before this Court.

5. Rule 8.3 of D.C.'s Rules of Professional Conduct, entitled "Reporting Professional Misconduct", states, in pertinent part:

> "(a) A lawyer who knows that another lawyer has committed a violation of the

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abjectly apologize for the typographical error on the Petition's first page, in the name of the Chief Justice, no less, whose middle initial should have been G, not D.

> Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
>
> (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

6. Additionally pertinent, Rule 3.8 of D.C.'s Code of Professional Conduct, entitled "Special Responsibilities of a Prosecutor" – the commentary to which begins "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate...". It, too, mirrors Rule 3.8 of the American Bar Association's Model Rules of Professional Conduct and its commentary.

7. This Court has articulated the U.S. Attorney's role in our justice system – a role assumed by the Solicitor General when he takes over for the U.S. Attorneys in advocacy before this Court:

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer.",

Young v. U.S. ex rel Vuitton et Fils S.A., 481 U.S. 787, 803 (1987), quoting *Berger v. United States*, 295 U.S. 78, 88 (1935).

8. In *Brady v. Maryland*, 373 U.S. 83, 88 (1963), this Court quoted former Solicitor General Simon E. Sobeloff as to the Solicitor General's role:

> "The Solicitor General is not a neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. My client's chief business is not to achieve victory but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious predecessors, Frederick William Lehmann, that the Government wins its point when justice is done in its courts."[3]

9. This Court's Rule 15.2 is very specific as to the purpose of a brief in opposition to a petition for a writ of certiorari:

> "In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted.

---

[3] Such appears at footnote 2 of *Brady v. Maryland*, annotating the text:

> "An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.'"

> Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition..." (underlining added)

10. The Solicitor General is not exempted from counsel's "obligation to the Court to point out any perceived misstatement" material to its grant of certiorari – which, had there been any, he could easily have ascertained from the U.S. Attorney for the District of Columbia for whom he here speaks[4]. Consequently, his waiver of the Government's "right to file a response" (Exhibit B) must be deemed a concession that the U.S. Attorney for the District of Columbia does not deny or dispute the Petition's factual and legal showing as to the state of the record and the issues before the Court by reason thereof. Yet, such record, being one of pervasive judicial lawlessness by the District of Columbia Court of Appeals, covering up pervasive judicial lawlessness

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[4] This Court's rules required me to serve the Solicitor General with three copies of the Petition – presumably one of which he forwarded for review and comment to the U.S. Attorney for the District of Columbia. This would be consistent with procedure outlined by the Chief Justice's article "*Riding the Coattails of the Solicitor General*" (Legal Times, March 29, 1993) in cases where the Government is not a party and the Court invites his response to a cert petition:

> "The procedure of the Office of the Solicitor General in responding (which it always does) is to request a draft from the pertinent Justice Department division in 30 days and to try to meet an informal, internal deadline for responding to the Court in 60 days."

At bar, "the pertinent Justice Department division" would be the U.S. Attorney for the District of Columbia.

in the District of Columbia Superior Court and pervasive prosecutorial misconduct before both courts by the U.S. Attorney for the District of Columbia[5], must necessarily trigger – if the Solicitor General's "business" truly is to "establish justice" – either an affirmative endorsement for this Court's granting of the Petition or notification to the Court that he is referring the Petition to disciplinary and criminal authorities for investigation and prosecution of the involved D.C. judges and U.S. Attorney staff. Instead, the Solicitor General has proffered his one-sentence waiver of the Government's "right to file a response".

11. There is no reason for the Court not to "request", if not order, the Solicitor General to file a brief as to the Government's response to the judicial and prosecutorial corruption particularized by my Petition and substantiated by the appendix documents. Doing so is incumbent upon any court committed to ensuring the integrity of the most important institutional players in the criminal justice system: judges and prosecutors. Such is consistent with the "appropriate action" called for by Canon 3B of the Code of Conduct for United States Judges[6] and would set a role model example for

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[5] Prosecutorial misconduct of the U.S. Attorney for the District of Columbia was the subject of reprimand and warning by the United States Court of Appeals for the District of Columbia Circuit in its decision in *United States v. Williams*, 952 F.2d 418 (1991). The U.S. Attorney's described misconduct of misstating the record in his respondent's brief is infinitesimal compared to my case where, *inter alia*, the U.S. Attorney's brief was a demonstrated "fraud on the court" for which I sought sanctions and his referral to disciplinary and criminal authorities [Petition, at p. 30].

[6] As set forth by my Petition in support of its fourth and culminating question "Does this Court recognize supervisory

emulation by other courts. As set forth in the powerful – and troubling – law review article "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*" (John M. Levy, Santa Clara Law Review, Vol. 22, pp. 95-116 (1982)):

> "If the Supreme Court started the process of openly commenting on ethical issues inherent in their cases, other courts would follow. Without leadership or a role model there will be no movement." at p. 116.

12. Even where the Government is not a party, the Court may request the views of the Solicitor General "At the certiorari stage, prior to deciding whether to grant review". Such was stated by the Chief Justice, formerly Principal Deputy Solicitor General (1989-1993), in his article "*Riding the Coattails of the Solicitor General*" (Legal Times, March 29, 1993). The article identifies that "Any one justice can precipitate an invitation" for the Solicitor General's views.

13. As the Chief Justice's article highlights the considerable weight the Court gives to the Solicitor General's views, it underscores the prejudice to me by the Solicitor General, whose

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and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?" (Exhibit C, p. 36).

> "Codes of judicial conduct uniformly require that judges 'take appropriate action' when they receive 'reliable evidence' of judicial misconduct. Among these, the Code of Conduct for United States Judges, to which this Court's Justices look for guidance, Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993)."

coattails I was entitled to ride by his response to my Petition's "Questions Presented for Review" and argument with respect thereto (Exhibit C). Inasmuch as the Government is here a party, the Solicitor General's response is now rightfully compelled by order of the Court. Such will enable the Justices to better recognize their obligations in face of the flagrant injustice done by the District of Columbia courts not only to me, but to the issues of constitutional magnitude and public importance that I brought for their adjudication and which are now before this Court.

WHEREFORE, petitioner respectfully prays that the Chief Justice, or, alternatively, the Associate Justices and/or the Court "request", if not order, the United States Solicitor General to file the Government's response to her Petition for a Writ of Certiorari to the District of Columbia Court of Appeals.

_____s/_____
ELENA RUTH SASSOWER

Sworn to before me this
17th of September 2007

_____s/_____
Notary Public

TABLE OF EXHIBITS
(Petitioner's September 17, 2007 motion to compel Solicitor General's response)

Exhibit A: Supreme Court's August 21, 2007 letter to Petitioner, with enclosed form **[RA-12]**

Exhibit B: U.S. Solicitor General's August 27, 2007 waiver of the Government's "right to file a response" **[RA- 14]**

Exhibit C: Pages from Petition for Writ of Certiorari **[RA-15]**
pp. i-iii: "Questions Presented"
pp. 2-3: "Statement of the Case"
pp. 34-36: "Reasons for Granting the Writ"

Exhibit A to petitioner's September 17, 2007 motion to compel Solicitor General's response

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

August 21, 2007

Ms. Elena Ruth Sassower
16 Lake Street
Apartment 2C
White Plains, NY 10603

Re: Elena Ruth Sassower
v. United States
No. 07-228

Dear Ms. Sassower:

The petition for a writ of certiorari in the above entitled case was filed on August 17, 2007 and placed on the docket August 21, 2007 as No. 07-228.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk
by s/
Erik A. Fossum
Case Analyst

Enclosures

Supreme Court of the United States

Elena Ruth Sassower
(Petitioner)
v. No. 07-228
United States
(Respondent)
To _____ Counsel for Respondent:

NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on August 17, 2007, and placed on the docket August 21, 2007. Pursuant to Rule 15.3, the due date for a brief in opposition is Thursday, September 20, 2007. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday, or federal legal holiday.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

Ms. Elena Ruth Sassower
Post Office Box 8220
White Plains, NY 10602
(914) 421-1200

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

Exhibit B to petitioner's September 17, 2007 motion to compel Solicitor General's response

IN THE SUPEME COURT
OF THE UNITED STATES

SASSOWER, ELENA RUTH
Petitioner

vs. No: 07-0228

USA

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

PAUL D. CLEMENT
Solicitor General
Counsel of Record

August 27, 2007

cc:

ELENA RUTH SASSOWER
16 LAKE STREET
APT. 2C
WHITE PLAINS, NY 10603

Exhibit C to petitioner's September 17, 2007 motion to compel Solicitor General's response

QUESTIONS PRESENTED

1. Is it a constitutional violation, *prima facie* disqualifying, and misconduct *per se* for a court to conceal and wilfully fail to adjudicate a motion for its disqualification, disclosure, and transfer – and does it have jurisdiction to proceed further in the matter?

2. Was the District of Columbia Court of Appeals disqualified for interest and for pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky v. United States*, 510 U.S. 540 (1994), from adjudicating these consolidated appeals, entitling petitioner to transfer to the United States Court of Appeals for the District of Columbia, including pursuant to D.C. Code §10-503.18?

3. Does the District of Columbia Court of Appeals' Memorandum Opinion and Judgment further manifest that Court's interest and pervasive actual bias and is it so materially false and insupportable as to be, in and of itself, unconstitutional under the Due Process Clause?

4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable "reliable evidence" of judicial misconduct and corruption?

   (1) to make referrals to disciplinary and criminal authorities

(2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance, *to wit*,*

"i. As evidenced from the course of the proceedings before Judge Holeman, was [petitioner] entitled to his disqualification for pervasive actual bias meeting the 'impossibility of fair judgment' standard articulated by the U.S. Supreme Court in *Liteky v. United States*, 510 U.S. 540? *

A. Were [petitioner's] February 23 and March 22, 2004 pretrial motions to disqualify Judge Holeman sufficient, as a matter of law, to require his disqualification for pervasive actual bias, divesting him of jurisdiction to 'proceed...further', pursuant to D.C. Superior Court Civil Procedure Rule 63-I – and was there any basis in fact and law for Judge Holeman's conduct and rulings challenged therein?

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* The four appellate issues that petitioner presented to the D.C. Court of Appeals, which its Memorandum Opinion and Judgment materially falsified, are set forth *verbatim* on this page and the next. The only change is the substitution of the word "petitioner" for "appellant" – as petitioner here presents these four appellate issues for this Court's adjudication.

"* Encompassed in this issue is whether Judge Holeman's rulings, individually and collectively, were so egregiously 'erroneous' and prejudicial as to require reversal."

B. Were Judge Holeman's subsequent pretrial, trial, and post-trial rulings further confirmatory of his pervasive actual bias – and were they factually and legally supported?

ii. Whether D.C. Code §10-503.18 entitled [petitioner] to removal/transfer of this 'disruption of Congress' case to the U.S. District Court for the District of Columbia where, additionally, the record establishes a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism' of the government?

iii. Is the 'disruption of Congress' statute, D.C. Code §10-503.16(b)(4), unconstitutional, *as written and as applied*?

iv. Whether, when Judge Holeman suspended execution of the 92-day jail sentence he imposed upon [petitioner], his terms of probation were appropriate and constitutional and whether, when [petitioner] exercised her right to decline those terms, pursuant to D.C. Code §16-760, it was legal and constitutional for him to double the 92-day jail sentence to six months?"

[p. 2] Rules 9 and 14; Code of Judicial Conduct for the District of Columbia Courts: Canons 3B, C, D, E, & F, American Bar Association Code of Judicial Conduct, Canons 3C & D; Code of Conduct for U.S. Judges, Canon 3B [A-1-12c].

STATEMENT OF THE CASE

> "The law makes a promise – neutrality. If the promise gets broken, the law as we know it ceases to exist." – Justice Anthony M. Kennedy[2]

This case demonstrates the truth of Justice Kennedy's words, exposing a long nightmare of judicial lawlessness resulting from the deliberate and repeated breaking of the law's promise of neutrality by judges self-interested in the outcome.

No facts are required for petitioner's first issue other than that the D.C. Court of Appeals allowed to stand a Memorandum Opinion and Judgment which conceals, without adjudication, her motion to its Chief Judge and the appellate panel for judicial disqualification, disclosure and transfer [A-282]. Nonetheless, the facts required for petitioner's further issues are also germane to her first. Over and again, they presage what the D.C. Court of Appeals ultimately did and reinforce the necessity that this Court articulate the simple legal

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[2] This quote is from a speech Justice Kennedy gave at the American Bar Association symposium, "Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice", held December 4-5, 1998 in Philadelphia, Pennsylvania. The quote is featured on the website of the Justice at Stake Campaign (www.justiceatstake.org) as to "Why Judicial Independence Matters", followed by the assertion "there are mechanisms to hold judges accountable. Rulings can be appealed up to the Supreme Court."

proposition – critical to ensuring judicial neutrality – that a court's willful failure to confront judicial disqualification/disclosure issues is *prima facie* disqualifying, misconduct *per se*, and divests it of jurisdiction to proceed further. The Court has never **[p. 3]** spoken on the subject.

Ordinarily, a brief factual summary would suffice. Here, however, a lengthier summary is essential because the Memorandum Opinion and Judgment materially falsifies the "disruption of Congress" incident, materially falsifies petitioner's four appellate issues to the D.C. Court of Appeals and the record with respect thereto, and materially omits all that Court's extensive prior contact with the case. It is this prior contact, spanning 2-1/2 years and embracing all four of those appellate issues, that underlies petitioner's unadjudicated and concealed motion for disqualification, disclosure and transfer – and establishes the D.C. Court of Appeals' disqualification for interest and pervasive actual bias meeting the "impossibility of fair judgment" standard of *Liteky v. United States,* 510 U.S. 540 (1994).

It must be noted that with one limited exception [A-34], all the D.C. Court of Appeals' orders during this 2-1/2-year span themselves conceal petitioner's prior motions for its disqualification, disclosure, and transfer. Consequently, these orders, though included in the appendix herein, cannot and do not provide information about the disqualification/disclosure/transfer issues. This has left petitioner with no choice but to herself recite the facts pertaining to her prior motions and those orders. Though consuming virtually the entirety of her cert petition, such provides this Court with the firmest of foundations for granting the petition.

The Alleged "Disruption of Congress"

Petitioner Elena Ruth Sassower is director of the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful, which she co-founded in 1993. Until January 2006, she was its coordinator.

On May 22, 2003, petitioner was arrested on a single misdemeanor charge of "disruption of Congress"

* * *

[p. 34] REASONS FOR GRANTING THE WRIT

This Court has direct jurisdiction over the D.C. Court of Appeals. Where, as here, a petition presents "reliable evidence" that D.C.'s highest court has flagrantly corrupted the judicial process to deprive a petitioner and the public of honest adjudication of far-reaching appellate issues, each of constitutional magnitude, to which they were constitutionally entitled, this Court's supervisory obligations are mandatory, as likewise its role-model responsibilities.

It is a Constitutional Violation, *Prima Facie* Disqualifying, and Misconduct *Per Se* for a Court to Wilfully Fail to Adjudicate a Motion for its Disqualification and for Disclosure – and It Has No Jurisdiction to Proceed Further in the Matter

This Court has recognized that "[A] biased decisionmaker [is] constitutionally unacceptable", *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), and "motions for change of venue to escape a biased

tribunal raise constitutional issues both relevant and essential", *Holt v. Virginia*, 381 U.S. 131, 136 (1965). Consequently, a motion to disqualify a court for bias and interest and to change venue necessarily raises constitutional issues which cannot be left unadjudicated without compounding the potential constitutional violation.

A court's wilful failure to adjudicate such motion must be deemed *prima facie* disqualifying and misconduct *per se* as the inference reasonably drawn is that adjudication would compel conceding the facts and law entitling relief. That a court would conceal the motion's very existence only reinforces this, II Wigmore on Evidence §278 at 133 (1979).

Absent adjudication of a pending disqualification/disclosure motion, a court must be deemed without jurisdiction to proceed further, *See* 48A Corpus Juris Secundum, §145; Judicial Disqualification: [p. 35] Recusal and Disqualification of Judges, §22.1, Richard E. Flamm, Little, Brown & Company (1996).

The D.C. Court of Appeals was Disqualified from these Appeals, Requiring Transfer, Including Pursuant to D.C. Code §10-503.18

The record establishes again and again during 2-1/2 years of proceedings in the D.C. Court of Appeals that its judges wilfully concealed and failed to adjudicate petitioner's requests for their disqualification, for disclosure, and for change of venue. Such conduct suffices to have disqualified them from the appeals, apart from the factual and legal baselessness of their orders, meeting the "impossibility of fair judgment" standard of *Liteky*.

Tellingly, the Memorandum Opinion and

Judgment conceals [A-16] that petitioner's second appellate issue asked whether she would be entitled to removal/transfer to federal court under D.C. Code §10-503.18 based on a record showing "a pervasive pattern of egregious violations of her fundamental due process rights and 'protectionism by the government" [A-306] – and that her brief had identified the record to include the D.C. Court of Appeals proceedings herein [A-239 (fn. 13].

The Memorandum Opinion & Judgment Further Manifests the D.C. Court of Appeals' Pervasive Actual Bias and Interest as it is Materially False and Knowingly So, Making it Additionally Unconstitutional

In denying rehearing and rehearing *en banc*, the D.C. Court of Appeals did not deny or dispute petitioner's particularized showing that its Memorandum Opinion and Judgment further manifested "its pervasive actual bias, born of interest" [A-297]. Such Opinion and Judgment, demonstrated to be materially false, unsupported – and flagrantly so – is additionally unconstitutional under the Due Process Clause. *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). **[p. 36]**

This Court's Supervisory & Ethical Duties Mandate "Appropriate Action" When a Cert Petition Presents "Reliable Evidence" of Judicial Misconduct and Corruption

Codes of judicial conduct uniformly require that judges "take appropriate action" when they receive "reliable evidence" of judicial misconduct. Among these, the Code of Conduct for United States

Judges, to which this Court's Justices look for guidance, Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993). As the Court plays a vital role-model function, its adherence to such codes is critical, "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, Santa Clara Law Review: Vol. 22, pp. 95-116 (1982).

This petition presents "reliable", indeed readily-verifiable, evidence of corrupt, lawless conduct by D.C. judges – triggering the Court's "appropriate action" under the Codes. In addition to disciplinary and criminal referrals, such requires redress of the injury done to petitioner and the public by the Memorandum Opinion and Judgment's dishonest, insupportable adjudications of the four appellate issues petitioner presented – each of constitutional magnitude and public importance.

Illustrative is petitioner's challenge to the constitutionality of the disruption of Congress statute, *as written and as applied*. The Memorandum Opinion rejects the challenge by claims [A-17] whose knowing falsity are instantly apparent from her appellate brief [A-240, 307]. Based thereon, any fair and impartial tribunal would have been compelled to strike the statute as unconstitutional in both respects and to reaffirm that "a citizen's respectful request to testify at a congressional committee's public hearing is not – and must never be deemed to be – 'disruption of Congress'". Such must now be done by this Court, with rulings similarly reaffirming of basic constitutional principles as to the three other appellate issues of petitioner's brief [A-230, A-238, A-252]

Petitioner's October 9, 2007 motion for clarification & recall/vacatur

No. 07-228

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2006

ELENA RUTH SASSOWER,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

MOTION FOR CLARIFICATION BY THE CHIEF JUSTICE, & FOR RECALL/VACATUR OF THE COURT'S OCTOBER 1, 2007 ORDER DENYING CERTIORARI & ADJUDICATION OF PETITIONER'S SEPTEMBER 17, 2007 MOTION TO COMPEL THE UNITED STATES SOLICITOR GENERAL'S RESPONSE TO HER PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia:

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the petitioner *pro se* and bring this application pursuant to Rule 22.1[1]:

> (a) for clarification of the Chief Justice's April 26, 2007 opinion in *Boumediene, et al. v. George W. Bush, et al.*, 127 S.Ct. 1725, which the Clerk's Office has represented will be the basis for its returning to me, unfiled, this motion for an extension of time to file my petition for rehearing of the Court's October 1, 2007 order denying my petition for a writ of certiorari (Exhibit 1-a); and
>
> (b) for recall/vacatur of the Court's October 1, 2007 order and adjudication of my September 17, 2007 motion to compel the United States Solicitor General's response to my cert petition (Exhibit 2).

2. The requested extension sought by my first branch and the recall/vacatur sought by my second branch are each based on the misconduct of the Clerk's Office in connection with my September 17, 2007 motion. As to this misconduct, I seek appropriate supervisory oversight by the Chief Justice, and, if necessary, the Court, beginning with a direction that Clerk William K. Suter respond to my unresponded-to September 21, 2007 letter to him (Exhibit 3-a).

3. To the extent the Chief Justice does not have authority pursuant to Rule 22.1 to recall/vacate the Court's October 1, 2007 order based on the

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[1] "An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the relief sought."

Clerk's Office misconduct, I request that he present such branch to the Associate Justices for determination, pursuant to Rule 21, pending which he stay my time to file my petition for rehearing until 25 days from the Court's decision therein, with an additional five days for mailing.

4. Needless to say, should the Chief Justice or the Court recall/vacate the October 1, 2007 order and grant my September 17, 2007 motion, I will not need to petition for rehearing, at least not at this time.

AS FOR MY FIRST BRANCH RELIEF: CLARIFICATION

5. In his opinion in *Boumediene*[2] – a case

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[2] The pertinent language of such opinion was brought to my attention on Friday afternoon, October 5th, by Supervisory Case Analyst Jeff Atkins, who acknowledged having received the two voice mail messages I had left for him the previous day, neither of which he had returned. Such voice mail messages had followed upon my speaking with case analyst Melissa Blalock in connection with my intended motion to extend my time to file a petition for rehearing from the Court's October 1, 2007 order denying my cert petition. Ms. Blalock had informed me that such would be sent back to me, but refused to identify where the Court Rules proscribed such motion or to discuss with me Rule 30.3. She told me to speak with Mr. Atkins, for whom I left my two voice mail messages for clarification on Thursday, October 4th.

Following my conversation with Mr. Atkins on October 5th, I left two additional voice mail messages for him – one about 2 hours later after I had gone to the law library and obtained the *Boumediene* opinion, and the second, today, Tuesday morning, October 9th, each requesting verification of what I understood Ms. Blalock to have told me: that the Clerk's Office had some sort of letter rejecting such extension applications and that it either gets or had been getting a great many of these applications.

where certiorari was subsequently granted[3] – the Chief Justice, as Circuit Justice, denied an application to extend time to file a petition for rehearing from an order denying certiorari, stating:

> "...while Rule 44.1 establishes a 25-day period for filing a petition for rehearing of a judgment on the merits 'unless the Court or a Justice shortens or extends the time,' Rule 44.2, articulating a 25-day period for filing a petition for rehearing of an order denying certiorari, contains no such exception, confirming that the Rules do not contemplate granting an extension for such petitions."

6. The assertion that "the Rules do not contemplate granting an extension for such petitions" is not the equivalent of saying that the Rules proscribe them, which the Chief Justice did not

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I received no return call from Mr. Atkins. However, according to case analyst Sandy Spagnolo, with whom I spoke after leaving my today's voice mail message for Mr. Atkins, the Clerk's Office's only letter on the subject is not from the Chief Justice, the Associate Justices, or the Clerk. Rather, it is the rejection letter that the Clerk's Office sends to petitioners who send in extension applications. Ms. Spagnolo, who – like Ms. Blalock – would not discuss with me the Court's Rule 30.3 – stated to me that she was unfamiliar with the *Boumediene* opinion and appeared to confirm that the Court gets considerable numbers of applications to extend time to file petitions for rehearing of orders denying certiorari.

[3] Certiorari granted June 29, 2007 – 127 S.Ct. 3078. According to The New York Times in reporting on the grant of certiorari in *Boumediene*, "The court rarely grants such motions for reconsideration. Some experts on Supreme Court procedure said they knew of no similar reversal by the court in decades." ("*In Shift, Justices Agree to Review Detainees' Case*", William Glaberson, 6/30/07).

say.

7. Indeed, there is another way of interpreting the language "unless the Court or a Justice shortens or extends the time" appearing in Rule 44.1. It may refer to the authority of the Court or Justices to alter the 25-day time frame as part of the "judgment on the merits" itself. Such would be consistent with the Clerk's Office's interpretation of the language in Rule 15.1, at issue with respect to my September 17, 2007 motion, that "when ordered by the Court" means the Court acting "on its own volition".

8. That the Rules do not preclude a party from seeking an extension of time to file a petition for rehearing of an order denying certiorari is further borne out by Rule 30, reference to which the opinion omits. Such Rule bears the title "Computation and Extension of Time" (underlining added). Its subdivision 3 expressly states, in pertinent part:

> "An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing shall be made to an individual Justice...". (underlining added).

Conspicuously absent is any distinction as to the type of petition for rehearing for which a party can apply for an extension, which, if intended, Rule 30.3 could have distinguished, just as it did in specifying "a reply brief on the merits".

9. Nor does the opinion address the interpretation that has been given to Rule 30 and its

predecessor provisions, reflected in the Court's practice, over untold years, perhaps decades, *to wit*, that the Clerk's Office, in compliance with accepted interpretation of the Rules, has received and filed these extension applications, thereupon channeling them to the individual Justices for their determination. Indeed, 14 years ago, in 1993, my own application for such an extension arising from the Court's denial of cert in *Sassower v. Field* (#92-1405) was directed to Associate Justice Clarence Thomas, then the Circuit Justice for the Second Circuit. Five years later, in 1998, my mother's application for such extension arising from the Court's denial of cert in *Sassower v. Mangano* (#98-106) was directed to Associate Justice Ruth Bader Ginsberg, then, as now, Circuit Justice for the Second Circuit. Both these Justices denied the extension applications. Similarly, the extension application in *Boumediene* was filed by the Clerk's Office and directed to the Chief Justice, who denied it.

10. Treatise authority such as Moore's Federal Practice also reflects the view that the Court's Rules allow for applications to extend time to file rehearing petitions from the denial of certiorari. Its volume 23 analyzes the Court's Rules and contains a §544.03 entitled "Requirements for Petition for Rehearing of Order Denying Certiorari" which states "...petitions for rehearing must be filed within 25 days after the date of the order of denial, unless that time is shortened or extended by the Court or a Justice...". Its §530.03 "Applications for Extensions of Time" recites at subdivision "[2]...An application for an extension of time...to file a petition for rehearing must be directed to an individual Justice...".

11. I do not know whether the Chief Justice submitted his interpretation of Rule 44 to the Associate Justices, but, assumedly, had he done so – and, certainly, had he consulted with the Clerk's Office – he would have been alerted to the ambiguity created by Rule 30, which his opinion does not cite. In any event, in the very period in which his opinion in *Boumediene* was rendered, the Court was revising its Rules. By Court order dated July 17, 2007, such revisions were "approved by the Court and lodged with the Clerk" and were to be effective October 1, 2007. The Court made no modification to Rule 44 and 30 to reflect any change in the long-accepted interpretation and practice of allowing extension applications for petitions for rehearing of orders denying certiorari.

12. If the Chief Justice's materially-incomplete opinion in *Boumediene* – unendorsed by the Associate Justices – is sufficient to alter the Court's prior interpretation of its Rules and practice pertaining to extensions for rehearing on cert denials, such should be embodied in something more publicly-circulated and authoritative than the *Boumediene* opinion, which the Clerk's Office can then selectively whip out to prejudice and sabotage specific litigants and their meritorious cert petitions.

13. That the Clerk's Office, in violation of its obligation to "faithfully and impartially" discharge its duties[4], acts invidiously to prejudice certain litigants and cert petitions – and does so undaunted by the prospect of accountability by the Chief Justice – forms the basis of my requested

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[4] 28 U.S.C. 951 "Oath of office of clerks and deputies".

extension and recall/vacatur relief.

AS FOR MY SECOND BRANCH OF RELIEF: RECALL/VACATUR OF THE COURT'S OCTOBER 1, 2007 ORDER & ADJUDICATION OF MY SEPTEMBER 17, 2007 MOTION

14. This Court's Rule 1 sets forth the sole basis upon which this Court's Clerk can "reject any submitted filing", namely, that it "does not comply" with the Court's Rules.

15. On September 17, 2007, I express-mailed to the Clerk's Office a motion (Exhibit 2) which fully complied with the Rules. It was a motion, pursuant to Rule 22.1, addressed to the Chief Justice, as Circuit Justice, asking that he "request", if not order, the Solicitor General to file the Government's response to my cert petition or, alternatively, that he present the motion to the Associate Justices for their consideration as to whether, individually or collectively, to require such response – in which event, I enclosed 10 copies of the motion, as Rule 21.3(c) requires.

16. The motion detailed that the Solicitor General's waiver of the Government's right to respond to my cert petition had to be rejected because it was violative of his mandatory obligations under ethical rules of professional responsibility, as well as his duty before the Court. This, because my cert petition was not about "error" or divergence in the courts below. Rather, it was about pervasive judicial lawlessness at two levels of the District of Columbia judiciary – its Court of Appeals and its trial level Superior Court – as well as pervasive prosecutorial misconduct by the United States

Attorney's Office for the District of Columbia in a politically-explosive "disruption of Congress" case against me, arising from my exercise of fundamental First Amendment rights[5] in respectfully requesting to testify in opposition to a federal judicial nominee at his public Senate Judiciary Committee confirmation hearing. My motion cited to the Chief Justice's own article, "*Riding the Coattails of the Solicitor General*" (Legal Times, March 29, 1993), to show the importance this Court attaches to the Solicitor General's views[6] and argued that his

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[5] The importance of an independent judiciary to upholding First Amendment rights was the subject of a speech by the Chief Justice on September 19, 2007 – the very day my motion was received by the Clerk's Office and returned to me, unfiled.

Although I have been told by the Court's Public Information Office that copies of the Chief Justice's speech will not be made available, its essence can be gleaned by from press coverage. Among these: "*Nation's top jurist says independent courts vital to free speech*", William Kates/Associated Press, 9/19/07; "*Roberts: Strong courts essential to free speech*", Tony Mauro/First Amendment Center, Legal Times, 9/20/07; "*Telling It Like It Isn't: John Roberts speaks out. A little.*", Dahlia Lithwick/Slate, 9/19/07.

[6] *Cf.* "*When (and Why) Does the U.S. Go To Court?*", Christopher J. W. Zorn (Dept. of Political Science, Emory University), presented at the Annual Meeting of the Midwest Political Science Association, 1997:

> "The United States federal government is the most frequent, the most important, and the most successful litigant in the American federal courts. On average, around forty percent of the cases heard by the U.S. Supreme Court involve the government as a party. Court cases involving the United States typically involve the most consequential issues for people's lives.... Because of its frequency in court, the United States is the only single litigant capable of significantly affecting the shape of the law across this

response to the cert petition was not only threshold to the petition's proper consideration by the Court, but to the Court's recognition of its mandatory obligations embodied in the petition's fourth and culminating "Question Presented":

> "4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?
>
> (1) to make referrals to disciplinary and criminal authorities
>
> (2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance..."

17. Among these issues: the pervasive actual bias of the D.C. Superior Court judge, reaching the "impossibility of fair judgment" standard that the Court enunciated in *Liteky v. United States*, 510 U.S. 540 (1994), the unconstitutionality of the disruption of Congress statute, *as written and as applied*, and proper interpretation of its venue provision, the

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whole range of issues. And in those cases, the federal government wins far more often than any other litigant: the result of which is that the position taken by the government in its litigation, more often than not, becomes the law of the land. In sum, no other litigant wields the influence of the United States in matters of the law."

unconstitutionality of the Superior Court judge's probation terms, as well as my legal right to decline such terms, without the judge thereupon retaliating against me by doubling his previously-announced 92-day jail sentence and immediately jailing me for six months.

18. Yet, this crucial September 17, 2007 motion, so vital to my rights, those of the public, and the state of our law, never reached the Chief Justice because the Clerk's Office returned it to me – and did so without even entering the motion on the case docket as having been received and returned, thereby concealing what it had done (Exhibit 1-b)[7].

19. I learned of the motion's return when I telephoned the Clerk's Office on Thursday afternoon, September 20, 2007. I spoke with Supervisory Case Analyst Jeffrey Atkins, who gave as the sole reason for the return that the Court, of "its own volition", can request the Solicitor General to file a response. My reply to him – as it had been on September 17, 2007 when I first phoned him about my intended motion – was that I could not reasonably rely on a busy Court to exercise its *sua sponte* power; that it was my position that the Solicitor General's waiver in the case at bar was violative of ethical rules of professional responsibility and his official duty; and that nothing in the Court's Rules, which I had read, precluded me from making a motion for the Court to direct the Solicitor General to file the Government's response to my cert petition.

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[7] A docket is defined as "A formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case." (underlining added) Black's Law Dictionary (8th edition, 1999, West Publishing Co.).

20. I asked Mr. Atkins which of the Court's Rules allowed the Clerk's Office to take over for the Chief Justice in effectively deciding my motion by returning it to me. He answered by telling me to "Have a good day" and disconnecting the phone conversation.

21. I thereafter called Mr. Atkins back – twice – but only got his voice mail. I left messages asking that he confirm whether – as it seemed – he had hung up on me. I reiterated my request that he identify which Court Rules authorized the Clerk's Office to return my motion and to do so without even recording its receipt and rejection, thereby creating a docket with a materially false case history. I stated that if he did not phone me back as soon as possible, I would have no choice but to seek supervisory oversight from his superiors.

22. In the absence of Mr. Atkins' return call, I telephoned the Clerk's Office and requested to speak with Mr. Suter. However, I was told by two separate people in the Clerk's Office that Mr. Suter does not take phone calls, that I could also not speak with his secretary, that I could not leave a voice mail message for him, and that the only way I could communicate with him was by letter. This, notwithstanding I explained the exigency of the situation, with the case on the Court's conference calendar for Monday, September 24, 2007.

23. Apparently, Chief Deputy Clerk Chris Vasil does take calls. Yet, upon being put through to Mr. Vasil, he put me "on hold" once I identified myself. I remained "on hold" for over five minutes, before hanging up. When I called him again shortly thereafter, I got only Mr. Vasil's voice mail. My

message for him summarized the exigency of the situation and requested his return call.

24. Despite this stated exigency, neither Mr. Atkins nor Mr. Vasil called me back – and by late in the afternoon the following day, Friday, September 21, 2007, I express-mailed[8] a letter to Mr. Suter, entitled "Clarification of Practices & Procedures at the U.S. Supreme Court Clerk's Office & Misconduct Complaint against Clerk Office Staff" (Exhibit 3-a), enclosing copies for Mr. Atkins and Mr. Vasil, both indicated recipients. After reciting the particulars of my communications with the Clerk's Office the previous day, I requested Mr. Suter to "promptly advise, including by fax and/or e-mail",

> (a) whether he approved of the described conduct of Mr. Atkins and Mr. Vasil;

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[8] Before doing so, I sought to confirm that the fax number I had for the Clerk's Office from nine years ago was still good and, if not, to obtain the new number. Lo and behold, upon calling the Clerk's Office and explaining that I needed Mr. Suter's fax number, I was told "let me get you to his secretary". The voice mail of Lynn Holtz then picked up, identifying that I had reached Mr. Suter's Office. Her messages stated that she was away until September 24th, but callers needing immediate assistance could contact Denise McNerney, whose telephone number was given: 202-479-3032. I then spoke to Ms. McNerney who would not confirm the old fax number I had nor give me a different number, stating that the fax was reserved for urgent matters. I responded that my matter was urgent as the case was calendared for Monday's conference and recited briefly my interaction with the Clerk's Officer, as recited in my letter, for which I required Mr. Suter's immediate supervisory oversight. Ms. McNerney then placed me on hold. I remained on hold for more than ten minutes before finally hanging up. Parenthetically, I was unable to transmit the letter using the old fax number.

(b) which Court Rules, if any, permit the Clerk's Office to have returned my September 17, 2007 motion for the Solicitor General's response to my cert petition – and to have done so without any record having been made in the Court's docket of either receipt of the motion or its return; and

(c) who in the Clerk's Office decided that the Chief Justice should not make his own decision with respect to my motion.

I further requested:

(d) the percentage of criminal cases in which the Solicitor General waives the Government's "right to file a response" to cert petitions; and

(e) whether in any of those criminal cases, the petitioners ever made motions to either a single justice or to the Court for the Government's response – and, if so, whether the Clerk's Office also sent those motions back to the petitioners, and did so without entering them on the case dockets – in which event, I asked for the case numbers or names.

25. I received no response to this letter from Mr. Suter, Mr. Vasil, Mr. Atkins, or anyone else at the Clerk's Office. This, although my letter had expressly stated that I would otherwise be turning to the Chief Justice "who bears ultimate supervisory oversight responsibilities over how the United States Supreme Court Clerk's Office operates".

26. The totality of what I received – which was on the day of the Court's September 24, 2007 conference – was a large padded envelope, postmarked September 19, 2007, containing a letter of that date from Mr. Atkins returning to me my original motion and the ten copies I had sent with it. The sole basis for the return was stated by Mr. Atkins' letter as follows,

> "If the Court wishes to see a response to a petition for a writ of certiorari, the Court will request a response on its own volition." (Exhibit 3-b).

27. Such is not a legal basis for the Clerk's Office to return to me my motion. The Clerk's authority to reject a "submitted filing" is limited by the Court's Rule 1.1 to where it "does not comply with these Rules". There is nothing about my motion (Exhibit 2) which "does not comply with [the Court's] Rules" or which its Rules preclude – and neither Mr. Atkins' September 19, 2007 letter, nor Mr. Atkins when challenged, nor Mr. Suter or Mr. Vasil have contended otherwise. Under such circumstances, the return of my motion was improper, as was the failure of the Clerk's Office, following my September 20, 2007 phone communications and September 21, 2007 letter, to take corrective steps to remove my cert petition from the Court's September 24, 2007 conference calendar so that my motion might be resubmitted for filing pursuant to Rule 29.1[9] and "promptly" transmitted to

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[9] "Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk."

the Chief Justice pursuant to Rule 22.1[10]

28. Insofar as Mr. Atkins' letter speaks of my motion's "request" for the Solicitor General's response (Exhibit 3-b), my motion had put the word "request" in quotation marks (Exhibit 2), reflecting the Solicitor General's phrasing in his waiver, which I believe to be more appropriate to cases where the United States is not a party. For cases where the United States is a party-respondent, as here, the Solicitor General may be "ordered by the Court", as ¶2 of my motion identifies, citing Rule 15.1. Such Rule does not indicate the Court's ordering as the product of "its own volition", rather than a motion made for such relief.

29. Although the Chief Justice's opinion in *Boumediene* does not involve Rule 15.1, it nonetheless provides an interpretive guide. This, because the "ordered by the Court" language of Rule 15.1 has parallels to the "by order of the Court or a Justice" language of Rule 16.3, relating to suspension of an order denying certiorari. Such "order by the Court or a Justice" might also be by the "volition" of the Court or a Justice. Yet, as *Boumediene* reflects, the petitioners therein made an application for suspension relief, which was transmitted to the Chief Justice, who adjudicated it.

30. The fact that this Court – or any court – may act "on its own volition" does not bar a party from making a motion. Plainly, the Court is free to deny the motion, if it is not persuaded by the supporting argument therein, as in *Boumediene*.

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10 See footnote 1 *supra*.

Indeed, this Court, busy as it is with hundreds, if not thousands of cert petitions to determine, as was the case with its September 24, 2007 conference calendar, benefits when it has before it a motion alerting it to salient and distinguishing facts and law which, given the realities of how cert petitions are processed, the Court is not likely to realize *sua sponte*.

31. Canon 3B(2) of the Code of Conduct for United States Judges – to which this Court's justices look for guidance[11] – and which binds all other federal judges[12] – states:

> "A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge."

No court – and certainly not our nation's highest – can allow its Clerk's Office to behave in the unprofessional and abusive manner recited by my September 21, 2007 letter (Exhibit 3-a) and to ignore such letter, without response. Response is properly required from Mr. Suter, to whom the letter was addressed, including to each of the letter's five enumerated questions. Particularly important is Mr.

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11 Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).

12 The American Bar Association's Model Code of Judicial Conduct contains a similar rule, Canon 3C(2): "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties" – replicated in rules binding state and District of Columbia judges.

Suter's response to the last question so that I may know whether the Clerk's Office is taking upon itself to deny me the "Equal Justice under Law", promised by the chiseled words on the Supreme Court's facade and, if so, the basis therefor. Certainly the possibility that the Clerk's Office is functioning in this case – and in other criminal cases – to "protect" the Government from accountability by blocking the Court from deciding motions to compel the Government's response frustrates the Justices from appropriate consideration of cases such as this where the criminal justice system has been hijacked for the ulterior political and personal purposes which my petition reflects.

32. Criminal defendants who make the long, arduous, and expensive journey to this Court in vindication of their lives, liberty, and property must not be denied the Government's response to particularized charges of collusive conduct between judges and prosecutors, as here at issue. Compelling such responses would assist the Court so that, even in denying cert review, it may advance justice by discharging its supervisory and ethical duties to refer "reliable evidence" of judicial and prosecutorial corruption and misconduct to disciplinary and criminal authorities, as Canon 3B(3) of the Code of Conduct for United States Judges requires.

33.. Examination of my September 17, 2007 motion – and my cert petition on which it is based – shows they are dispositive of the Court's supervisory and ethical duties both as to the motion and the petition.

WHEREFORE, petitioner respectfully prays that the Chief Justice stay her time to file her petition for rehearing of the Court's October 1, 2007 order denying her petition for a writ of certiorari pending response from the Court's Clerk, William K. Suter, to her September 21, 2007 letter, which must be directed, and grant her a 30-day extension from the date of the decision on her entitlement to recall/vacatur of the Court's October 1, 2007 order and to adjudication of her September 17, 2007 motion to compel the United States Solicitor General's response to her petition for a writ of certiorari, with such other and further relief as may be just and proper.

_____s/_____
ELENA RUTH SASSOWER

Sworn to before me this
9th of October 2007

_____s/_____
Notary Public

TABLE OF EXHIBITS
(Petitioner's October 9, 2007 motion for clarification & recall/vacatur)

Exhibit 1-a: October 1, 2007 letter from the Court's Clerk, William K. Suter, giving notice of the Court's denial of petition for a writ of certiorari **[RA-1]**

Exhibit 1-b: Clerk's Office Computerized Docket Sheet **[RA-44]**

Exhibit 2: Petitioner's September 17, 2007 motion, with express mail receipt and tracking **[RA-2]**

Exhibit 3-a: Petitioner's September 21, 2007 letter to Mr. Suter, with express mail receipt and tracking **[RA-46]**

Exhibit 3-b: September 19, 2007 letter from Jeffrey Atkins, Supervisory Case Analyst **[RA-52]**

Exhibit 1-b to petitioner's October 9, 2007 motion for clarification & recall/vacatur

Docket for 07-228

No. 07-228

Title:	Elena Ruth Sassower, Petitioner v. United States
Docketed:	August 21, 2007
Lower Ct:	District of Columbia Court of Appeals
Case Nos:	(04-CM-760, 04-CO-1600)
Decision Date:	December 20, 2006
Rehearing Denied:	March 20, 2007

Date	Proceedings and Orders
May 21 2007	Application (06A1105) to extend the time to file a petition for a writ of certiorari from June 18, 2007 to August 17, 2007, submitted to The Chief Justice.
May 30 2007	Application (06A1105) granted by The Chief Justice extending the time to file until August 17, 2007.

Aug 7 2007	Application (07A106) to file a petition for a writ of certiorari in excess of page limits, submitted to The Chief Justice.
Aug 9 2007	Application (07A106) to file petition for a writ of certiorari in excess of age limits granted by The Chief Justice. The petition for a writ of certiorari may not exceed 36 pages.
Aug 17 2007	Petition for a writ of certiorari filed. (Response due September 20, 2007)
Aug 27 2007	Waiver of right of respondent United States to respond filed.
Aug 29 2007	DISTRIBUTED for Conference of September 24, 2007.
Oct 1 2007	Petition DENIED.

Exhibit 3-a to petitioner's October 9, 2007 motion for clarification & recall/vacatur

Petitioner's September 21, 2007 letter to Clerk William K. Suter

By Express Mail: EB 502217763 US

September 21, 2007

William K. Suter, Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Clarification of Practices & Procedures at the U.S. Supreme Court Clerk's Office & Misconduct Complaint against Clerk Office Staff
Elena Ruth Sassower v. United States of America, #07-228

Dear Mr. Suter:

This letter follows up my many phone calls to the Clerk's Office yesterday afternoon, urgently requesting to speak with you or your secretary about the misconduct of Clerk Office staff under your supervision. Notwithstanding the exigency of the situation – with the above-entitled case calendared for court conference on Monday, September 24th – I was told that you do not take phone calls, that I could also not speak with your secretary, that there was no way for me to leave a voice mail message for you, and that the only manner in which I could

communicate with you was by letter.

Although I know from past experience that any letters to you inquiring about the practices and procedures of the Clerk's Office and complaining about the misconduct of its staff are an exercise in futility[1], due process and fundamental decency require that you be afforded an opportunity to address the situation prior to my turning to Chief Justice Roberts, who bears ultimate supervisory **[p.2]** responsibilities over how the United States Supreme Court Clerk's Office operates.

The facts are as follows: Yesterday, at about 1:30 p.m., I called the Clerk's Office to inquire as to the status of my motion to Chief Justice Roberts, as Circuit Justice for the District of Columbia. Such motion asked that he "request", if not order, the United States Solicitor General to file the Government's response to my petition for a writ of certiorari, or, alternatively, that he present the motion to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response. I had express mailed an original and ten copies of the motion to the Clerk's Office on Monday, September 17th, for delivery the following day, September 18th.

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1 These prior unresponded-to letters are posted on CJA's website, www.judgewatch.org. The October 14, 1998 and October 26, 1998 letters to you are accessible *via* the sidebar panel, "Test Cases-Federal (*Mangano*)", in the section pertaining to the U.S. Supreme Court. My March 12, 2004 letter to you is accessible via the sidebar panel "Searching for Champions-Federal" which links to a webpage for "Chief Justice Rehnquist & Associate Justices".

My initial phone call yesterday, September 20th, was directed to Jeffrey Atkins, a case analyst supervisor, who stated that the motion had been returned to me. The sole reason Mr. Atkins gave was that the Court, of its own volition, can request the U.S. Solicitor General to file a response, which is what Mr. Atkins had stated to me on Monday, when I first called him about my intended motion. My reply to Mr. Atkins yesterday was similar to what I had told him three days earlier, namely, that I could not reasonably rely on a busy Court to exercise its *sua sponte* power; that it was my position that the Solicitor General's waiver, in the case at bar, was violative of ethical rules of professional responsibility and of his official duty; and that nothing in the Court's rules, which I had read, precluded me from making a motion for the Court to direct the Solicitor General to file the Government's response to my cert petition.

I then asked Mr. Atkins which of the Court's rules allowed the Clerk's Office to take over for Chief Justice Roberts in deciding my motion by returning it to me. His answer was to tell me to "Have a good day" and disconnect the phone conversation.

Upon calling him back – which I did twice within the next 15 minutes, the second call being shortly before 2:00 p.m. – I got only his voice mail. My voice messages for him asked that he confirm whether – as it seemed – he had hung up on me. I reiterated my request that he identify which Court rules authorized the Clerk's Office to return my motion. Indeed, I also asked which Court rules authorized it to do so without even recording my motion or its return on the case docket, thereby creating a false case history. I asked Mr. Atkins to get back to me soon as possible, as I would otherwise have no choice

but to seek supervisory oversight from his superiors.

By 3:40 p.m., I telephoned the Clerk's Office and requested to speak with your Chief Deputy Clerk, Chris Vasil – your "second in command" – who does take phone calls. Mr. Vasil picked up the phone, but immediately put me "on hold" when I identified myself. I remained "on hold" for over five minutes, before hanging up. At 4:05 p.m., I again phoned Mr. Vasil, but now got his voice mail. My voice message for him summarized the urgency of the situation and requested a return call.

[p. 3] It is now nearly 4:30 p.m., Friday, September 21st, and I have received no return call from either Mr. Atkins or Mr. Vasil about a case that must be removed from Monday's conference calendar, so that the Chief Justice Roberts – as Circuit Justice for the District of Columbia – can first decide my motion for the Solicitor General's response, including my motion's alternative request that he present it to the Associate Justices for their consideration as to whether, individually or collectively, the Court must request the Solicitor General's response.

So that I may protect my rights and those of the public, prejudiced by the actions of the Clerk's Office, please promptly advise, including by fax and/or e-mail, as to:

> (1) whether you approve of the conduct of Mr. Atkins and Mr. Vasil, as hereinabove recited[2];

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[2] Recitations of Mr. Vasil's prior misconduct appears in my October 26, 1998 letter to you (at p. 2) and in my March 12, 2004 letter to you (at p. 5). My March 12, 2004 letter also recites Mr. Atkins' prior misconduct (at pp. 4-6). That being

(2) which Court rules, if any, permit the Clerk's Office to have returned my September 17th motion for the Solicitor General's response to my cert petition[3] – and to have returned it without any record having been made in the Court's docket of either the motion or its return; and

(3) who in the Clerk's Office decided that Chief Justice Roberts should not make his own decision with respect to my motion. Was it Mr. Vasil, Mr. Atkins, yourself, or others, individually or collectively?

Please also advise as to:

(4) the percentage of criminal cases in which the Solicitor General waives the Government's "right to file a response" to cert petitions; and

(5) whether in any of those criminal cases, the petitioners ever made motions to either a single justice or to the Court for the Government's response. If so, please confirm that the Clerk's Office also sent those motions back to the petitioners, and did so without entering them on the case dockets –

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said, it is incumbent upon me to note – and thank – Mr. Atkins for his assistance in connection with my August 7, 2007 motion to add 5-1/2 pages to my cert petition.

[3] In the event, you were not aware of my motion – and no copies of it were made or retained by the Clerk's Office before being sent back to me – it is posted on CJA's website, accessible *via* the sidebar panel "'Disruption of Congress'-The Appeals".

supplying me with the case numbers or names.

[p. 4] Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Chris Vasil, Chief Deputy Clerk
Jeffrey Atkins, Supervisory Case Analyst
Paul D. Clement, United States Solicitor General

Exhibit 3-b to petitioner's October 9, 2007 motion for clarification & recall/vacatur

SUPEME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 19, 2007

Elena Ruth Sassower
16 Lake Street
Apartment 2C
White Plains, NY 10603

Re: Elena Ruth Sassower v. United States
No: 07-228

Dear Ms. Sassower:

The motion to request the Solicitor General to file a response received September 19, 2007 is herewith returned. If the Court wishes to see a response to a petition for a writ of certiorari, the Court will request a response on its own volition.

Sincerely,
William K. Suter, Clerk
By: s/
Jeffrey Atkins
(202) 479-3263

Enclosures
cc: Paul D. Clement

Petitioner's October 9, 2007 letter to Clerk William K. Suter

BY EXPRESS MAIL

October 9, 2007

William K. Suter, Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Application/Motion Pursuant to Rule 22.1
Sassower v. United States of America, #07-228

Dear Mr. Suter:

Pursuant to Rule 22.1, the enclosed application/motion is being sent to you for filing and prompt transmittal to Chief Justice Roberts as Circuit Justice for the District of Columbia.

Should you deem the application not in compliance with the Court's Rules, please advise by letter as to the particulars of this non-compliance. Do not, however, return to me the application and its enclosed 10 copies. Rather, because time is of the essence, I request that you transmit them to the Chief Justice, together with my enclosed letter to him, so that he may administratively address, as a complaint, your misconduct and that of the Clerk's Office which is the subject of the application/motion and take such steps as may assure its rightful judicial determination.

Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Supreme Court Justice John G. Roberts
Solicitor General Paul D. Clement

Enclosures

Petitioner's October 9, 2007 letter to Supreme Court Chief Justice John G. Roberts

BY EXPRESS MAIL

October 9, 2007

Chief Justice John G. Roberts
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against U.S. Supreme Court Clerk William K. Suter & the Clerks' Office

Dear Chief Justice Roberts:

This letter is a formal complaint of misconduct against U.S. Supreme Court Clerk William K. Suter and the Clerk's Office. It is written to you in your administrative capacity, as you bear ultimate supervisory oversight responsibilities over Mr. Suter and how the Clerk's Office operates.

The facts constituting this complaint are set forth in the enclosed application/motion addressed to you as Circuit Justice in case number #07-228, *Elena Ruth Sassower v. United States of America*. In violation of Rule 22.1, Mr. Suter has refused to file the application/motion and transmit it to you so that you can adjudicate his misconduct and that of the Clerk's Office which has prejudiced and sabotaged my meritorious petition for a writ of certiorari to the District of Columbia Court of Appeals.

In the interest of judicial economy, I respectfully refer you to that application/motion, which Mr. Suter is forwarding to you, with this letter, as I requested him to do by separate letter to him, a copy of which is attached.

Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Supreme Court Clerk William K. Suter
Solicitor General Paul D. Clement

Enclosures

Petitioner's October 26, 2007 letter to Chief Justice Roberts

BY PRIORITY MAIL
CERTIFIED MAIL/RRR: 7003-1680-0001-8617-5151

October 26, 2007

Chief Justice John G. Roberts
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against U.S. Supreme Court Clerk William K. Suter & His Staff: Case #07-228: *Elena Ruth Sassower v. United States of America*

Dear Chief Justice Roberts:

This letter is a formal complaint of misconduct against U.S. Supreme Court Clerk William K. Suter and his staff. It is written to you in your administrative capacity, as you bear ultimate supervisory oversight responsibilities over Mr. Suter and how the Supreme Court Clerk's Office operates.

The facts constituting this complaint – as of Tuesday, October 9, 2007 – were set forth in an October 9th motion addressed to you as Circuit Justice in case number #07-228, *Elena Ruth Sassower v. United States of America*. An original and ten copies were express mailed to Mr. Suter on that date, with a letter addressed to him, requesting

that if he did not file and transmit the motion to you, pursuant to Rule 22.1, he transmit it to you as a complaint against him and the Clerk's Office so that you could handle it administratively. In that event, I enclosed a separate explanatory letter for you.

According to U.S. postal service records, the express mail package was delivered to the Court at 10:48 a.m. on Wednesday, October 10th. However, as of today, October 26th, the Clerk's Office has not docketed the motion, I have received nothing from the Clerk's Office by mail, fax, or e-mail, and my telephone inquiries to Mr. Suter's staff as to the status of the motion and its alternative administrative complaint to you have been ignored and rebuffed, leaving me wholly "in the dark". The particulars of this further misconduct, spanning from October 12th to date, are set forth by my accompanying October 26th letter to Mr. Suter. A copy is enclosed, as is a copy of my prior October 9th letter to Mr. Suter, its attached October 9th letter-complaint to you, and my October 9th motion.

[p. 2] All these documents are reproduced in the appendix of my petition for rehearing of the Court's October 1, 2007 order denying my petition for a writ of certiorari. The first section of my petition for rehearing pertains to the official misconduct of Mr. Suter and his staff, entitling me to recall/vacatur of the October 1, 2007 order. Such would render the petition for rehearing moot.

In the event Mr. Suter and his staff refuse to file the petition for rehearing and distribute it to you and the other Justices for disposition, a copy is also enclosed in support of this complaint.

Thank you.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Supreme Court Clerk William K. Suter
Solicitor General Paul D. Clement

Enclosures

Petitioner's October 26, 2007 letter to Clerk Suter

DELIVERY CONFIRMATION:
0300-1290-0006-9069-4874

October 26, 2007

William K. Suter, Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against You and the Clerk's Office, Now Further Embodied in Petition for Rehearing: *Elena Ruth Sassower v. United States of America*, #07-228

Dear Mr. Suter:

Enclosed is a copy of my letter of today's date to the Chief Justice, constituting my complaint against you and your staff for official misconduct. Such misconduct, particularized by my October 9, 2007 motion, is now supplemented by your misconduct in handling that motion. This includes your wilful failure – and that of your staff – to advise me as to the status of the motion and of its alternative accompanying October 9th letter-complaint for the Chief Justice, with knowledge that I would thereby be delayed and impeded in protecting my rights by myself sending a complaint to the Chief Justice and/or filing a petition for rehearing, due today, October 26th. I have now done both.

If you have a legal basis for failing to file and "promptly" transmit to the Chief Justice my October 9th motion, as is your duty pursuant to Rule 22.1, please set it forth. Please further identify the dates on which you received and reviewed the motion and why you took no steps to ensure that I would have expeditious notice of its disposition. As with my September 17th motion, your computerized docket for case #07-228 contains no entry of receipt and disposition of the October 9th motion.

As for the particulars of your staff's misconduct in connection with the motion, they are as follows:

[p.2] On Friday, October 12th, I called the Clerk's Office at 12:45 p.m. to ascertain the status of my October 9th motion. According to U.S. postal service records[1], it was delivered to the Court two days earlier, at 10:48 a.m. on Wednesday, October 10th. I spoke with Kendra Morgan, an assistant, who told me she would verify the status with your secretary, Lynn Holtz, and get back to me. Three hours later, at 3:45 p.m., having not heard back from Ms. Morgan, I left a voice mail message for her. At 4:00 p.m., I followed this with a voice mail message for supervisory case analyst Jeff Atkins.

At 4:25 p.m., I again called Ms. Morgan, who I now reached. She told me that I would have to speak with Mr. Atkins. I responded that I had already left him a voice mail, but had not yet received a return call. I asked her to request Mr. Atkins to call me as soon as possible. I thereupon left a second voice mail message for Mr. Atkins, imploring that he call me

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1 Copy attached.

back so that I might be guided appropriately in making my weekend plans. I received no return call.

On Monday, October 15th, I left a voice mail message for Ms. Morgan at 10:00 a.m., a voice mail message for Mr. Atkins at 11:30 a.m., a voice mail message for Ms. Holtz at 12:00 p.m., and another voice mail message for Mr. Atkins at 3:30 p.m. I received no return calls.

At 4:25 p.m., I telephoned the Court's Office of Legal Counsel and spoke with Christie Cherry, a paralegal assistant, requesting information about procedures for forwarding a complaint against you and your staff to the Chief Justice. After explaining to her the relevant particulars, Ms. Cherry stated that since the hour was late, she would get back to me the next day.

On Tuesday, October 16th, I received a phone call at about 10:00 a.m. from Eric Fossum, a case analyst in the Clerk's Office. Mr. Fossum told me that he had been asked to call me. However, he knew nothing about the case, other than that my petition for a writ of certiorari had been denied on October 1st. After providing him with pertinent background[2], Mr. Fossum put me "on hold", following which he told me that the Clerk's Office had not received the motion "at this point". I replied that this was quite a surprise not only because the U.S. postal service

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[2] Mr. Fossum's responses to what I told him included his emphatically telling me that the Court's rules "no longer specifically allow" for extensions of time to file petitions for rehearing from the denial of cert and that there were "absolutely no extensions". However, he would not identify the Court rules he was talking about, nor discuss with me Rule 30.3.

records showed delivery to the Court six days earlier, but because no one at the Clerk's Office had responded to my many voice mail messages inquiring about the motion by telling me that the motion had not been received.

Mr. Fossum did not say who he had consulted when he put me "on hold" and thereupon told me that the motion had not been received "at this point". He refused to answer my question as to who had asked him to call me and hurried off the phone upon my questioning him, stating that **[p. 3]** he was not the case analyst for this case. At 10:20 a.m., I phoned Mr. Atkins, but got only his voice mail, on which I left a message. At 10:25 a.m., I phoned Ms. Holtz, but likewise only got her voice mail, on which I left a message. At 10:54 a.m., I left a voice mail message for merits clerk Denise McNerny. I also began making calls to the mailroom to ascertain whether it had a record of the motion's receipt and delivery to the Clerk's Office.

At 12:30 p.m., I phoned the Office of Legal Counsel and left a voice mail message for Ms. Cherry. She called me back an hour later, at which time she stated that she had been told by the Clerk's Office that it had now received my motion and that it was "being processed today". However, Ms. Cherry would give me no further information about it, including who was doing the "processing". I implored her to relay to whoever it was that I wished to be informed, as soon as possible, whether it was going to be filed and transmitted to the Chief Justice or, alternatively, given to him as an administrative complaint, as requested in my accompanying October 9th letter to you. Ms. Cherry also told me that there are "no formal procedures" for a complaint against

you, but that I could mail a complaint directly to the Chief Justice, at the courthouse.

At 2:55 p.m., I phoned Mr. Atkins, but only got his voice mail. My voice mail message for him requested to know who was "processing" my motion and asked that I be informed, as soon as possible, as to the outcome. I thereupon called Ms. Holtz. This time, she answered the phone. However, she refused to speak with me, stating that Mr. Fossum had already spoken with me. I explained that Mr. Fossum had not known anything about the case and that although he had told me that my motion had not been received "at this point", I had since learned that it had been received and was being "processed today". Ms. Holtz hung up on me as I asked who was handling the "processing". Upon promptly calling her back, I got only her voice mail, on which I left a message, reiterating my requests to know who was "processing" my motion and to be informed as soon as possible of its outcome. I received no return call.

On Wednesday, October 17th, I phoned Sandy Spagnolo, the case analyst for this case. It was then about 1:42 p.m. – and I got her voice mail, on which I left a message inquiring as to the outcome of the "processing" of my motion. By 4:00 p.m., having received no return call, I telephoned Mr. Atkins. I left a similar message on his voice mail, requesting to know the outcome of the "processing". I received no return call.

On Monday, October 22nd, having received no return calls and no postal return of my motion or any written communication from the Clerk's Office, I phoned Mr. Atkins. It was then 4:12 p.m. and I got his voice mail. Again, I left a further message

inquiring as to the status of my motion. I thereupon phoned the Clerk's Office, requesting to know the status – and was routed to Ms. Spagnolo, on whose voice mail I left a message. I received no return calls.

On Wednesday, October 24th, having still received no return calls, no postal return of my motion, and no written communication from the Clerk's Office, I again left voice messages for **[p. 4]** Ms. Spagnolo, at 3:40 p.m., and for Mr. Atkins, at 4:40 p.m., requesting a return call as to the status of the motion, as well as other information needed for finalizing my petition for rehearing. I received no return calls – nor any written communications from the Clerk's Office.

The foregoing record of misconduct by you and staff under your direction is now embodied in my petition for rehearing. Enclosed are the required 40 copies, together with the required certificate of its word count, certificate of service, and $200 check.

Yours for a quality judiciary,
s/
ELENA RUTH SASSOWER
Petitioner *Pro Se*

cc: Chief Justice John G. Roberts
Solicitor General Paul D. Clement

Enclosures